



## Introduction

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# PART I

## CHAPTER I

### INTRODUCTION

#### *References*

Garner—Political Science and Government, Ch. I.

Gilchrist—Principles of Political Science, Ch. I.

Bryce—Modern Democracies, Vol. I, Ch. 2.

Gettel—Political Science, Chs. 1, 2.

Barker—The Study of Political Science and its Relation to co-ordinate studies.

**Terminology.** The study of the state as a form of human organisation is the main subject-matter of political science. But there is no precise and commonly accepted name with which the science of the state may be christened. Aristotle used the term 'Politics' to designate the science of the state and some of the modern writers still adhere to the Aristotelian nomenclature. But objections may be raised against the use of the term 'Politics' on various grounds. Firstly, as has been pointed out by Gilchrist, the word 'Politics' is no longer used as a proper designation of the science of the state. Modern usage has given the term a meaning which is quite different from its etymological sense, viz., science of the city-state. The word 'Politics' as ordinarily used today refers to current problems of a country which engage the serious attention of the government. The word is now invariably employed to mean a political or administrative problem with which the government of a country is confronted at a particular time, as for example, the Kashmir problem, the Labour problem, the Indo-Pakistan relation, the Reconstitution of provinces on linguistic basis, etc. constitute some of the Indian current politics. Secondly, there are writers who have used the term in two senses,—theoretical and applied Politics. The former is a study of the state in its fundamental characteristics while the latter deals with the actual administration of the affairs of the government. Gilchrist, therefore, is rightly of opinion

that the word 'Political Science' will be a better substitute for the word 'Politics' inasmuch as Political Science covers the whole field of state-life, theoretical as well as practical.

The term 'Political Philosophy' has been suggested by some writers as the proper title for the science of the state while a majority of writers prefer the term 'Political Science'. Although the two terms are often used synonymously, a distinction must be drawn between the two for the sake of scientific exactitude. The term 'Political Philosophy' includes a study of the nature, attributes and theories of the state, while 'Political Science' is to deal with concrete political institutions. Thus Political Philosophy is concerned with generalisations, Political Science with particulars. But the majority of writers are of opinion that as Political Philosophy is concerned with theories only, it should form a part of Political Science which deals with theoretical as well as practical politics.

There are other writers, notably among the French, who prefer the plural form '*political sciences*' to the single term '*political science*'. These writers lay emphasis on the complexity of the modern state organisation and rightly point out that the different aspects or forms of manifestations of the state have developed a history and dogma of their own and should therefore be studied quite distinctly from one another. Thus Sociology, Political Economy, Public Finance, Diplomacy, Constitutional History, may be designated political sciences because each of them deals directly or indirectly with particular aspect of the state. But as against this view, it may be pointed out that the above-mentioned sciences are so inter-related to, and inter-dependent on, one another that their treatment as independent sciences would be wholly unwarranted. Viewed from the stand-point of either their scope or purpose, these political sciences are too similar to justify their claim to be treated as separate sciences. Hence the majority of writers use the term 'Political Science' to designate the subject-matter of our study.

**Definition and Scope.** Political Science investigates into the phenomena of the state. It begins and ends with the state. It is a study of the state as the highest political agency

for the fulfilment of the common needs and the furtherance of the general welfare of society. Political Science is mainly concerned with the problem of reconciling the authority of the state with the liberty of the individual. It deals not only with the relation of man and man as members of the state but also with the relation of individuals or associations to the state itself and also with inter-state relation. It deals both with political theories and political institutions. According to Prof Gettel, the scope of Political Science is very wide. It includes a study of the historical development of the state, an analytical and comparative study of its present form and a philosophical study of the state as it ought to be. For a scientific study, Gettel has subdivided it into the following heads —

(i) Historical Political Science which deals with the history of the gradual coming into being of the state.

(ii) Political Theory which is a politico-ethical discussion about the fundamental concepts of the state.

(iii) Descriptive Political Science which is an analysis and examination of the fundamental nature and characteristic of the state with the classification of the constitution of the state into Legislature, Executive and Judiciary.

(iv) Applied Political Science which is a study of the state as it should be, i.e., the proper sphere and the ultimate ends of the state

Dr Garner examines a number of definitions of political science and concludes that "the phenomena of the state in its varied aspects and relationships, as distinct from the family, the tribe, the nation, and from all private associations or groups, though not unconnected with them, constitute the subject-matter of political science." According to him, the essential problems with which political science is concerned are three in number. Firstly, it investigates into the nature of the state as the highest form of political organisation for the furtherance of social welfare, secondly, it is an enquiry into the nature, history and forms of political institutions and finally, it endeavours to deduce the laws of political institutions. Dr. Garner is further of opinion that the fundamental problems of political science remain almost unchanged although the emergence of new political conditions gives rise

to new problems which in their turn influence the course of practical politics. The growth of the state has been considerably influenced by the social, economic and cultural environments which in their turn change from age to age. The political scientist must take note of these changes and their effects on state organisation. The investigation of political science should therefore be of a dynamic and not of a static character. Prof Laski asserts that a new political philosophy is necessary to a new world. The ideas and ideals of the old world are badly in need of re-orientation in the light of modern political development.

**Methods of Political Science.** The study of the political phenomena has acquired the status of a science and various methods have been suggested for the investigation of the science.

**The Historical Method** This method consists in the observation of historical facts and it attempts to explain and interpret the inner connection between the past and the present. This method makes generalisations from the study of historical facts. These generalisations are helpful for future guidance. But in applying the method, it is absolutely necessary to make a careful selection and analysis of historical facts on the one hand and to avoid any bias or prejudice on the other.

**The Philosophical Method** The philosophical method follows the reverse process of the historical method. Its chief exponents were Rousseau, Mill, and Sidgwick. The philosophical method starts with abstract principles, then seeks to harmonise them with the concrete realities of history. It first assumes an abstract ideal on the basis of which the nature, functions and end of the state are determined. But the philosophical method baffles its purpose when it indulges in abstract speculation without paying any regard to actual political facts as is seen in Plato's *Republic* and in Moore's *Utopia*.

**The Comparative Method** This is a modified form of the historical method. It consists in a study of present politics and those that existed in the past and tries to find out some

general principles by a process of selection, elimination and comparison. In using the comparative method, one must take care in the selection of facts and also in the avoidance of superficial resemblances. In deducing generalisations, allowance should be made for diversity of conditions and circumstances.

**The Experimental Method** It is of less importance in its application to the science of politics because 'We cannot do in Politics what the experimenter does in Chemistry' The science of the state is so complex and is influenced by so many extraneous factors that scientific experimentation is inapplicable to the study of the state. Hence it is not a perfect science like other physical sciences. It deals with the complex motives and actions of men which are constantly changing. It is a progressive science inasmuch as the physical and social environment in which men live, act and think are subject to constant changes.

**Method of Observation.** (Lord Bryce was a brilliant exponent of this method which consists in the observation of the world of political life and then separating the essential from the non-essential features. (Human nature being fundamentally the same everywhere, the political scientist may deduce generalisations from such observation, making allowance for local variations) In making his conclusions, the observer must be sure of his sources of information and superficial analogies should not be allowed to prejudice his conclusions.

### **Sociological, Biological and Psychological Methods.**

These three methods are closely related to one another. The sociological method seeks to account "for the origin, growth, structure and activities of society by the operation of physical, vital and psychical causes, working together in a process of evolution" In studying social and political phenomena, sociology utilises the theories formulated by biology and psychology. The advocates of the biological method apply the theory of evolution to the life of the state and draw an analogy between a living organism and the state which follows the same law of its origin, growth and decay as a natural organism. But it should be remembered that laws governing



the growth and change of a biological organism are not always applicable to the state.

The psychological method attempts to study the motives of the behaviour of man individually and collectively in groups and associations and on the basis of this study, it attempts to analyse and explain political phenomena with the help of psychological laws. The psychological method is helpful in explaining the causes of international disputes and also the issues on which political parties are organised.

**Juridical Method.** The juridical method, like the above three methods, seeks to consider the state from a particular point of view and as such cannot be regarded as a perfect method. This method describes the state as a juridical person whose main function is the formulation and enforcement of laws. The view is as vicious as that of the German idealists who described the state as a 'moral entity'.

### Is there a Science of Politics ?

In naming the subject-matter of our study as Political Science, we have assumed that politics is a science. But the claim of politics to be ranked as a science has been rejected by eminent writers like Comte and others who refuse to recognise politics as a science mainly on three grounds. In the first place, there is no unanimity among the writers on the subject as to its methods, principles and conclusions. This lack of uniformity makes political hypothesis and prediction, if not impossible, at least difficult. Secondly, it lacks the elements which help us in making correct generalisations about the future trend of events. Thirdly, others point out that politics is not and cannot be a science in view of the fact that its premises are uncertain and its conclusions are inexact. Besides, every subject,—every problem of politics admits of different interpretations and hence of different views. Thus the speculative character of the subject coupled with the lack of order and continuity in the phenomena of the state is pointed out by those writers who deny to it the character of a science.

The controversy whether politics may be treated as a science at all came to its end in the nineteenth century when

the consensus of scientific opinion was in favour of regarding it as a science. To comprehend really the scientific character of politics, it is necessary, first, to examine the meaning of the word 'science'. A science may be defined as "all knowledge, communicable and verifiable, which is reached by methodical observation and experiment and which admits of concise, consistent, and connected formulation". The function of science is therefore the classification of facts and the formulation of laws and principles on the basis of this classification. Judged from the above standpoint, the claim of political science to be treated as science is irresistible. The scientific method of investigation is not only peculiar to the physical phenomena, it is applicable to the social phenomena as well. Writers on political science have collected from various sources immense mass of facts which they have co-ordinated, systematised and classified. This scientific method of examining facts has enabled them to formulate laws or principles which act as a basis for wise political action.

But it must be remembered that political science is not as exact as the physical sciences and the conclusions of political science, like the conclusions of mathematics, are not absolute truths. The real fact is that the science of the state is so complex and is influenced by so many extraneous factors that scientific experimentation is inapplicable to the study of the state. Hence it is not a perfect science like other physical sciences which can make correct forecasts inasmuch as they deal with matters which are invariable. Physical sciences deal with natural objects like water, heat, light, etc., which are uniform and behave in the same way under given condition. Any variation in the composition of the natural objects may be tested and explained. But no two men will behave exactly in the same way under given condition. Political science deals with the complex motives and actions of men which are constantly changing. Politics is a progressive science inasmuch as the physical and social environments in which men live, act and think are subject to constant changes, making it difficult, though not impossible, to make accurate conclusions. It is for this reason that politics was compared to a relatively

less developed and less exact science like meteorology by no less a person than Lord Bryce.

### **Relation to other Sciences.**

(1) *Relation to Sociology*—Sociology may be described as the fundamental social science inasmuch as it treats of all forms, civilized and uncivilized, of human associations. Political science, on the other hand, has to do mainly with one form of human association, namely, the state and as such its scope is narrower than that of Sociology. Political science is restricted to a particular aspect of human society while Sociology deals with the social man in all the various aspects of his life, namely, social, ethnic, economic, political, religious, etc. So Political Science may rightly be regarded as the child of Sociology

Although the spheres of the two sciences have been separated for a more thorough study, yet they touch at many points, and are in many respects, complementary to each other. The state, which is the subject-matter of political science, is one of the many associations which have sprung up into existence in every society. Besides, society is prior in its origin to the state and man was found to be a social animal long before he turned to be a political animal. Sociology is a study of the evolution of the state from its very birth and it endeavours to analyse the complex social forces which are responsible for bringing the state organisation into existence. The relation between the two sciences has been described by Garner in the following words "Sociology derives from political science knowledge of the facts regarding the organisation and activities of the state, while political science derives in large measure from sociology its knowledge of the origin of political authority and the laws of social control. The political scientist therefore ought to be at the same time a sociologist, and vice versa."

(ii) *Relation to History*—Political science is closely related to History. It is impossible to make any scientific study of any human institution without any reference to its past history. The political institutions that exist today in a particular form have their roots in the past and History which is

a record of past events and institutions, furnishes us to a great extent with the data for comparison and induction. All our political institutions are the products of history and the study of political science without its historical significance will turn out to be entirely speculative in character. But it must be remembered that true history is more than a mere chronicle of events. 'True history is philosophy teaching by history' The relation between History and Politics has been very aptly described by Sir John Seely as follows —

History without Political science has no fruit.

Political science without History has no root.

But we must remember, as Garner points out, that not all of History is past Politics or that Politics is present history. The history of art, science, industries, religion, language, military expeditions—is of no use to the political scientist. Conversely, that part of political science which is philosophical and speculative in character is not based upon historical data. The truth is that "to fully comprehend Political science in its fundamental relations, we must study it historically, and to interpret History in its true significance we must study that politically" It must be remembered that History is not a mere delineation or chronology of facts and events. The study of History becomes fruitful only when political significance lying back of political events and movements is properly appreciated. The materials thus gathered from History are to be utilised to form the basis of the present. Thus both the subjects are complementary and contributory.

(iii) *Relation to Economics*—The Greeks regarded Political economy as the art of providing revenue for the state and even as late as the eighteenth century, Political economy was regarded as a branch of Political science by the Physiocratic school of writers in France. Although the science of wealth and welfare has now been emancipated from the fetters of the science of the state, yet the two touch at many points. The forms and functions of a government are considerably influenced by economic forces. Conversely, the economic activities of a society, its production, distribution and exchange, are largely conditioned upon the form of government and this

explains the fundamental difference between the economic systems prevailing in England and in the U.S.S.R. Again there are certain subjects which are common to both, such as tariff, currency, taxation, etc. Social life and political life are in modern times so intermixed with, and interdependent upon each other that the one cannot be completely divorced from the other. The modern states are confronted with numerous economic problems, the solution of which cannot be made except through the political action of the state. The ultimate problem of politics, viz., the reconciliation between liberty and authority, is, in reality, an economic problem. Bad politics hampers economic progress, bad economy corrupts politics.

(iv) *Relation to Ethics*—Political science is also closely related to Ethics. Both the sciences are concerned with man. But while Ethics controls both the motives and external actions of men, Political science deals only with the external conduct of men in society. Again both are concerned with what ought to be. The 'ought' of Ethics comes from the conscience of men while that of Political science from the law-making authority. Besides, political ideas cannot be completely divorced from moral ideas. Laws should be enacted in such a way as to strengthen the moral ideas of the people. The actions of the state that violate the principles of morality are condemned. Gettel remarks that the existence of the state can be justified because it has an ethical standpoint, ethical end and moral significance. The ancient philosophers duly emphasised the moral end of the state.

(v) *Relation to Psychology*—Though a rational creature man is not altogether free from the influence of instinct, emotion and passion. Psychology is a study of the behaviour of men as they are influenced by the above factors, while political science deals with political relationships of human beings and these relationships are considerably influenced by psychological factors. Modern writers like MacDougall, Le Bon and others have laid great prominence on psychological factors in determining the form and organisation of the government of a country. The writers of this school seek to explain the political traditions and institutions of a country in terms of the psychology and genius of the people of that

country Thus the peculiar constitutional system of Great Britain is ascribed to the temperament and racial genius of the Anglo-Saxon race. Psychological approach to the study of political problems no doubt helps us in accurately estimating the political behaviour of men but it should be borne in mind that all political problems cannot be interpreted in terms of psychological analysis.

(vi) *Relation to Jurisprudence*—Jurisprudence may be rightly regarded as a sub-division of Political science inasmuch as laws which form the subject-matter of jurisprudence are created and sustained by the state. But there is a difference between the two. While jurisprudence deals exclusively with law, Political science is concerned with the study of the state of which law is an instrument by which the state enforces its will upon the citizens. Law therefore, reflects the character of the state concerned.

(vii) *Relation to International Law*—Politics and International law seem to be allied sciences since both of them deal with state-life and the relations existing between different states. International law is concerned more with the rules that civilized states observe in their daily contact with one another. Pacifists and internationalists hope that with the gradual perfection of international law making its sanction obligatory on all states, the subject will be absorbed in Political science.

### **Utility of the Study of Political Science.**

The study of Political science is useful in many respects. It has both a theoretical and a practical interest. A proper study of political science enables us to acquire knowledge of a very useful subject. It broadens the mind and enlarges a man's intellectual outlook.

On the practical side, we learn from it fully the mechanism of the modern state, how laws are formulated and enforced so that common welfare can be promoted. The study of Political science makes us conscious of our rights and duties and the ways in which the rights are to be exercised and the duties discharged. The knowledge obtained from the study of Political science enables us to assess properly

the value of political institutions and in the light of such assessments, political institutions and developments may be moulded for a better social life.

The utility of the study of Political science has assumed greater importance to the citizens of India in view of the recent change in the status of the Indian people. India is no longer in bondage, she is a sovereign democratic republic today. It is therefore, imperative on the part of her free citizens to make a close study of political science so that they may be in a position to promote their national welfare.

### SUMMARY

The science of the state is variously known as Politics, Political Philosophy and Political Science.

Political Science is concerned with the state. It includes a three-fold study of the state: the state as it has been, an analytical study of what it is, and a philosophical discussion of what the state ought to be. It deals with the statics and dynamics of state.

Theoretical Politics is concerned with the laws of political development while Practical Politics deals with actual political institutions. Political Philosophy is abstract in character, while Political Science is concrete in nature.

Political Laws are hypothetical in nature. They are not so exact as the laws of other natural sciences.

There are various methods of the study of Political Science, viz. historical method, comparative method, philosophical method, experimental method, etc. Of these, the historical and philosophical methods are regarded as more sound and correct.

#### *Is there a Science of Politics?*

Some writers go to the length of refusing to Political Science the name of science. They argue that as political phenomena are lacking in order and continuity and marked by uncertainty and variableness, the scientific method of investigation is inapplicable to it. Hence, it should not be treated as a science. But the subject is now universally recognised as a science in view of the fact that the huge mass of

materials at its disposal is capable of being treated by ordinary scientific methods. But it cannot claim the same degree of perfection which other sciences have attained. It is an imperfect science.

For a clear understanding of the scope of Political Science, it is necessary to study its relation to the allied sciences.

(a) *Political Science and Sociology*—Sociology is a study of human society as a whole in all its aspects, while Political Science is concerned with only one form of society, viz., the state.

(b) *Political Science and History*—Political history forms the groundwork of Political Science inasmuch as the former deals with the growth, development and decay of political institutions. Similarly Political Science is concerned with History, but only with the part of History which can explain political institutions

(c) *Political Science and Economics*—Political life and economic life are mutually interdependent in modern times. The production and distribution of wealth in a country is largely influenced by the policy pursued by a state while economic conditions profoundly influence the organisation of the state

(d) *Political Science and Ethics*—The relation between the two was more marked in ancient society. The standard of state activity is suggested by the ethical standard. Both of them preach the same ideal that man should lead a clean and honourable life. But while Ethics regulates the whole course of a man's life, Political Science only his external conduct. It deals mainly with man as a citizen.

(e) *Politics and Psychology*—Politics has a relation with Psychology inasmuch as political activities of men are very often influenced by psychological motives. Though psychological approach is helpful to the study of political problems, all political problems can not however be explained in terms of psychological analysis.

(f) *Political Science and Jurisprudence*—Jurisprudence deals exclusively with laws made by the state while political science deals with the state in all its aspects

(g) *Political Science and International Law*—International



law deals with the relations existing between civilized states and as such it may be regarded as a subdivision of Political Science

*Utility of the study of Political Science*—The study of political science has a theoretical as well as a practical interest.

- (a) It helps us to acquire knowledge of an important subject
- (b) It helps us to know how governments are formed and how they function.
- (c) It is a source of knowledge of civic rights and duties
- (d) As India is free today, the citizens of India should acquire this knowledge in order to promote national welfare

### QUESTIONS

1. Discuss the scope of Political Science. Do you agree with the view that there is a science of Politics?

2. 'History without Political Science has no fruit Political Science without History has no root' Discuss the statement (C U 1933)

3. Discuss the nature and scope of Political Science with special reference to its relation with Ethics and History (C. U 1949, Sup)

4 (a) "Politics is not an experimental Science" (G. C Lewis)

(b) "Politics (so far as it is a science) is an experimental science" (James Bryce)

(c) "Politics is an observational and not an experimental science." (Lowell)

Examine these statements. (C. U. Hon 1952)

5. Discuss the relationship of Political Science to History and Economics (C U 1958)

6. Discuss the scope of Political Science. How far do you agree with the view that History is the root of Political Science? (C. U. 1959)

7. Define "Political Science" and discuss the nature of its relationship with Economics and Sociology (C U 1960)

## CHAPTER II

### THE STATE : DEFINITION, NATURE AND CHARACTERISTICS

#### *References .*

Garner—Political Science and Government, Chs 4 and 5

Willoughby—The Nature of the State, Chs 1, 2.

Barker—Principles of Social and Political Theory (1952) pp. 42-77.

Gettel—Political Science, Chs. 3, 4.

**Definition of the State.** Political science deals mainly with the state. We should, therefore, have a clear understanding of the term 'state'. The term 'state' was first used by Machiavelli in the modern literature of political science. The Greeks and the Romans lived in what is called city-states and they used the term '*Polis*' and '*Civitas*' respectively which were quite appropriate for the purpose of describing the nature of the ancient state. The Teutons used the term '*Status*' which conveyed some idea of the territorial nature of the state. In modern times, the term 'state' is used in various senses. It is used as a synonym for nation, government, society or country. The term is also wrongly applied to certain political communities which are not regarded as states at all, viz, the component units forming the federation of the United States of America and also of the Indian Union.

The term 'state' has been variously defined by different writers and in order to understand the true nature of the state, it is necessary that we should examine some of the important definitions.

Aristotle defines a state as "A union of families and villages having for its end a perfect and self-sufficing life, by which we mean a happy and honourable life."

Bluntschli defines a state thus — "The state is a politically organized people of a definite territory." The German writer Seydel says, "A state comes into existence whenever a number

of men who have taken possession of a part of the earth's surface, unite themselves together under a higher will." Woodrow Wilson defines the state thus.—"A state is a people organized for law within a definite territory."

There are other definitions, given by Hegel, Holland, Sidgwick, Willoughby and a host of others but none of them is comprehensive inasmuch as each one of them emphasises only a particular or a few aspects of the state and neglects the others. A correct definition of the state should, therefore, include the essential elements of the state and explain its true nature. Dr Garner's definition of the state is regarded by many as the best. The definition runs as follows—"The state, as a concept of political science and public law, is a community of persons more or less numerous, permanently occupying a definite portion of territory, independent or nearly so, of external control, and possessing an organized government to which the great body of inhabitants render habitual obedience."

✓ **Essential elements of the State.** The essential elements of the state,—political, physical and spiritual are (a) population, (b) territory, (c) organisation and (d) sovereignty. Population and territory constitute the physical basis of the state while government and sovereignty make up its spiritual basis.

(a) *Population*—There cannot be a state without a number of people including citizens, subjects and aliens. But there is no hard and fast rule regarding the size of the population. Aristotle laid down the principle that the state should be large enough to be self-sufficing and small enough to be well-governed. Rousseau also considered that the number should be limited. But every state must have a population sufficient to constitute a ruling body and a number of persons to be governed, and of course sufficient to maintain a state organization.

(b) *Territory*—A permanent relation of the people to the soil is essential to the formation of a state. Population and territory go hand in hand. Nomadic tribes like the Beduins cannot form a state. The territorial jurisdiction of a state, extends not only over the land, but also over rivers, lakes,

mountains, marginal sea, subsoil and the aerial space above it. Territorial sovereignty of a state has certain exceptions. Ambassadors, embassies and men-of-war even when they are in a foreign state remain subject to the jurisdiction of their respective states. These extra-territorial rights enjoyed by all states rest on mutual consent of all states. But there is no definite rule regarding the extent of territory which a state must contain within it. The size of the modern state is determined largely by its geographical conditions, natural resources and the outlook of the people. Ancient states were small in size but the modern tendency is towards an enlargement of the size of the territory. The development of the means of communication and the introduction of the system of local government have contributed to the growth of big territorial states.

The concept of territory is inseparable from that of the state in view of the fact that territory is an element which distinguishes the state from other forms of social organisation. Territory has a special significance in the formation of a state in the sense that membership of the state is confined to the people living in its territory, while members of other associations may belong to different territories of different states. Again, a state may contain many voluntary associations within its territory, but not more than one state can exist in the same territory.

The power and prosperity of a state also depend, to a large extent, on the size and extent of its territory. A bigger state with a variety of natural resources possesses greater advantages in ensuring a better and higher standard of living to its people than a smaller state. USA and U.S.S.R. are cases in point. But it must also be admitted that a big state unless properly developed and properly protected becomes more vulnerable to foreign invasion than a small state. The dangers of a big state not well-organised are amply proved by the case of India. But it should be borne in mind that the greatness of a state depends not only on its size. In the last analysis, it is the character and temperament of the people that count more than anything else. Ancient Greece was very small but the impact of its power and civilization was

felt practically throughout the world. In modern times, the tiny island of Great Britain has exerted a tremendous influence in shaping the course of world events.

(c) *Unity of organization*—Population and territory, however, cannot form a state. There must be some sort of political machinery which exercises the supreme power of the state. The government is that machinery or organization through which the collective will of the state is formulated, expressed and enforced and the ends of the state realised. Unless people of a territory are subject to the control of an organized government, a territory cannot be called a state simply because it is inhabited.

(d) *Sovereignty*—Sovereignty is the most important characteristic of the state. It is the distinctive mark between a state and other forms of human organization. Sovereignty has two aspects, viz., all-comprehensiveness and exclusiveness. The first one implies the idea of an unlimited authority of the state to impose its will upon all persons, associations and things within its jurisdiction. This supremacy of the state within is known as *internal sovereignty*. The second aspect of state sovereignty means independence from foreign control. If a state is controlled by another state, the former will no longer be regarded as a sovereign state and it will become a part of the state which exercises control over it. This is the reason why India before August 15, 1947, could not be regarded as a state. This aspect is known as *external sovereignty*.

Among modern writers, Prof Laski defines the state as "a territorial society divided into government and subjects claiming, within its allotted physical area, a supremacy over all other associations." Laski was a writer who at least upheld the pluralistic view of state sovereignty. But on a close examination of his definition of the state it appears that he did not like to deprive the state altogether of its sovereign character. MacIver is openly pluralistic in his view of state sovereignty and practically places the state on a par with other associations. He proposes to limit the absolute sovereignty of the state by making it commensurate with the function of the state. According to MacIver, "The state is

an association which, acting through law as promulgated by a government endowed to this end with coercive power, maintains within a community territorially demarcated the universal external conditions of social order."

The above analysis of the elements of the state points to the fact that the state is both an 'abstract concept' and a 'concrete organisation'. From the abstract point of view, it is a juridical person a corporation, distinct and separate from the people and territory constituting its physical aspect. In the concrete sense, it is identified with its physical elements, population and territory. Political Science is a study of both the aspects of the state.

### **Idea and Concept of the State.**

Some writers have distinguished the *idea* of the state from the *concept* of the state. The idea of the state refers to the ideally perfect state while the concept of the state means an actual state with all its limitations and imperfections. The concept of the state is a concrete state, having all the natural and essential characteristics of actual states. The idea of the state is an imaginary state, the state as it ought to be. Many writers hold that the idea of the ideal state will materialise in the establishment of the universal state, a beginning of which was made by the establishment of the *League of Nations*, and then by the *United Nations* and such other international institutions which may be said to be the precursors of the future world state.

The distinction has been further elaborated by Prof. Burgess who holds that the idea of the state is the state *perfect and complete* while the concept of the state is the actual state moving towards perfection. He hopes that with the gradual progress of mankind the state as a concept will be identical with the state as an idea.

Every age has its own ideal of the state. Both Plato and Aristotle drew the picture of an ideal state which, according to them, was the city-state in which man for the first time became fully independent and self-sufficient. The ideal of the city-state was replaced by that of the world-state organised on the basis of force. Beginning with Alexander the Great and

ending with Adolf Hitler, several attempts were made to realise the ideal. But the nineteenth century saw the birth of nation states organised on the basis of the principle 'one nation one state'. The ideal of the world-state has been revived in the present century though in a new form. The new ideal is embodied in the organisation of a world-state not on the basis of force but on federal principles. The 'United Nations Organisation' stands for that lofty ideal.

### Other aspects of the State.

(a) *Permanence and Continuity*—A state is a permanent association in the sense that a community of persons once politically organized must continue to live within a state. Continuity refers to the concrete and corporate existence of the state which is not affected by changes in the form of government. A revolution might bring about a change in the form of government but the concrete existence of the state continues with but a different form of government.

(b) *Equality of states*—Writers on international law advocate equality of all states in the eye of international law. Equality implies two things, legal equality and political equality. The former implies the right of every state, big or small, to protection before the law while the latter refers to the right to equal voice in international affairs. Legal equality of states is an accepted dogma in modern political science but the demand of small states for equal voice in international affairs has not yet been recognised.

**The state according to International law.** A community of persons possessing the characteristics of a state as enumerated above may not be recognised as a state by international law which requires something more to constitute a state. The state as a concept of international law must be fully independent and must have the legal capacity to enter into international relations. It must possess the power and will to fulfil its obligations to other states. The recognition of a state as such by other members of the family of nations confers upon it the right to legal and political equality. So long as a state is not recognised by other states, it cannot be regarded as a full-fledged state though it may possess all the essential elements.

that go to constitute a state. Recognition by other states is, therefore, a condition precedent to statehood according to international law. Since the coming into being of the United Nations, membership of this all-important organisation is deemed essential to a state for the attainment of international statehood.

The question of recognition of the Peoples' Republic of China has assumed a world-wide importance in recent years. The old Kuomintang government has long been driven out of the mainland of China and the new Republic is firmly established on the soil. Many of the states including Great Britain, India, U.S.S.R. and Pakistan have already recognised her sovereign status and have established diplomatic relations with her. Nevertheless she is lacking in the most essential element of international statehood, namely, membership of the United Nations. She has been unjustly denied a seat on the UN to which she has a legitimate claim and her claim is likely to be recognised in the near future as she has the moral support of the world behind her.

### **Is the United Nations a State ?**

The United Nations is in a sense the successor to the League of Nations which came into existence and functioned in between the two World Wars. Like its predecessor, the UN is an international association of sovereign states which is more in the nature of a *Staatenbund* than a *Bundestaat*. The Charter of the U.N. which is the basis of this great international organisation nowhere gives the slightest indication that states forming this association have in any way vested sovereign authority upon the UN by surrendering their own. The U.N. is therefore lacking in the most essential attribute of a state, namely, sovereignty and as such it cannot be given the status of a state, far less a super-state inasmuch as it cannot enforce its will upon a dissentient member. The member-states reserve the full right to secede from it at their will. Besides, the UN has no citizen of its own and no territory to govern excepting its headquarters in New York. The U.N. of course possesses a sort of governmental organisation of its own consisting of the General Assembly, the Security Council, the permanent Court of International Justice and a Secretariat



but the mere possession of a governmental machinery is not the sole criterion of a state which must be sovereign both within and without. So long as the U. N. is not vested with this sovereign authority to regulate the activities of its member-states, it cannot be called a state.

### **The position of the British self-governing Dominions, India and Pakistan.**

It may now be asked: Are the British Self-governing Dominions states? The answer to this question, according to the strict definition of the state, is a simple negative. They are members of the British Commonwealth of Nations and theoretically subordinate to the British Crown. In case of a war between Great Britain and any other country, the enemy country will not recognise the neutrality of any of these dominions unless they openly declare their neutrality as was done by the Irish Free State (EIRE) during the Second World War. But there is another and more important aspect of the question. Since the First World War, these dominions have attained a status which is regarded as good as independent and, to crown all, the *Statute of Westminster, 1931*, recognises them not only as autonomous units, but also as equal in status and in no way subordinate to the mother country. The Statute also leaves them free to secede from the British Empire when they so desire. The British Parliament exercises only a nominal control over them. They may not be regarded as separate states but for all practical purposes they enjoy almost all the rights of states and hence Prof. Garner defines the state as 'a community of persons . . . independent, or nearly so' . . . The Dominions are nearly independent and their claim to statehood has almost been recognised inasmuch as they are free to conduct their government in their own way and to have foreign relations according to their free choice.

It is necessary now to discuss the status of the two newly-created Dominions—India and Pakistan which came into existence by the Indian Independence Act, 1947. The Act terminated all British authority over the two Dominions, conferred sovereign powers on the constituent assemblies of the two Dominions to frame their constitutions in their own way and even to modify or reject the Independence Act itself. It was

also provided that the title "Emperor of India" was to be dropped from the title of the British King. Lastly, each of the dominions was completely free to secede from the Commonwealth. Besides, the word 'British' has been dropped from the term 'British Commonwealth of Nations,' which implied British superiority.

But there are critics who refuse to recognise the statehood of India simply on the ground of her membership of the Commonwealth which seriously detracts from the sovereign democratic character. True it is that she still continues to be a member of the Commonwealth and recognises the British Crown as the symbolic head of that Commonwealth without owing allegiance to Him but these in no way weaken her sovereign character. The King has no doubt been recognised as the symbolic head of the Commonwealth of which India is a member but the King has no function in relation to India. The Headship of the King, so far as India is concerned, is only notional. "The Commonwealth of Nations," says an expert, "is founded partly on sentiment and partly on mutual self-interests, in some of the Dominions the one predominates, in others, more importance is attached to the other." India continues to be a member of the Commonwealth because as a sovereign state, she herself has chosen to remain so in view of certain benefits to her in the sphere of economic and political matters. Besides this, a careful study of the New Constitution of India will reveal that India has adopted in her constitution many of the basic principles of the British Constitution, such as, parliamentary democracy, rule of law, judicial independence. It is therefore only natural that she should maintain a relation of friendship with Great Britain for her own interest without in any way impairing her sovereign status.

In the Commonwealth Conference of May, 1949, the Prime Minister of India made it abundantly clear to other members of the Commonwealth that in the near future, India would proclaim herself to be a Sovereign Democratic Republic and this status of India was accepted by all. So it is useless to deny statehood to India.

✓ **State and Government.** It is now necessary to distinguish between state and government, because failure to distinguish

between the two led to great confusion in the past. Government, as we have already seen, is only one of the four characteristics of the state. Government is the agency which is set up by the state and through which the collective will of the state is formulated, expressed and enforced. "The state", Dr Garner says, "is a sovereign community", while the government is the collective name for the agency, magistracy or organisation through which the will of the state is formulated, expressed and realised. It includes the sum-total of all the legislative, executive and judicial bodies in the central and local organs. The state includes the whole body of people whereas the government only those who are engaged in expressing and enforcing the will of the state. The government is therefore narrower than the state.

The state is a permanent association whereas the government may be short-lived. The state might continue in spite of changes in the government.

The state possesses sovereignty whereas the power of the government is merely derivative, being delegated to it by the state.

The individual may have rights against the government but he has no rights against the state. In our daily life, it is not always possible to make a scientific distinction between the will of the state and that of the government. What we mean is that an individual may not have rights, in the legal sense of the term, apart from the state. The state is the fountain of all rights.

Again, we find that all states are alike. The characteristics, viz., population, territory, government and sovereignty, —are common to all states but governments differ in their forms and organisations.

Lastly, the state is largely an abstraction which can be conceived apart from the existence of any particular state but government is concrete. The state is subjective, the government is objective.

**State, Society, Community and Association.** A **Society** is a collection of individuals bound together by some common end. According to Mackenzie, society is a general term which

is applicable to a great number of different modes of unity among individuals. The state exists within society which is full of other associations and institutions.

**Community.** A Community has been defined by G. D. H. Cole as "a complex of social life, a complex including a number of human beings living under conditions of social relationship, bound together by a common, however, constantly changing stock of conventions, customs and traditions, and conscious to some extent of common social objects and interests." A community is therefore an aggregate of individuals bound together by ties of common customs and traditions and conscious to some extent of common social objects and interests. In order to form a community, a group of individuals need not possess any definite territory, nor does it require any organisation of its own. The essential feature of a community is that the members of a community must have some common objects and interests.

**An Association.** says MacIver, is an organisation within the society for the achievement of conscious and therefore limited purposes. A society contains many such associations of which the state happens to be an important one. Society influences the common living of social beings through numerous associations of every kind, economic, political, educational, religious, scientific, professional, and philanthropic. An association pursues one or a few common interests while society acts through its numerous associations for a variety of objects. The state is an association within society but it must not be identified with society. There are fundamental differences between State and Society.

### **State and Society.**

*Firstly*, Society is wider than the state. A society is a group of individuals bound together by some common social objects; whereas the state is born within society for the attainment of specific ends. A state refers only to the politically organised portion of society.

*Secondly*, in order to constitute a society a definite territory is not essential. But a state is unthinkable without a fixed habitation.

*Thirdly*, in point of time, society is prior to the state. Man is by nature a social animal. The social instinct in man manifested itself long before he could even conceive of creating the state "Kinship creates society and society at length creates the state."

*Fourthly*, a state must possess an organised government to enforce its will but a society need not possess any recognisable political organisation. There are many primitive social groups like the Beduins or the Eskimos who do not possess any organised government.

*Fifthly*, a society does not require sovereignty which is the essential characteristic of the state and without which the state loses its statehood.

*Lastly*, the two differ in so far as their aims and objects are concerned. The state, as we have seen, is only one of the many associations within society and is entrusted only with a limited function. The state regulates only the external conduct of men, but society has a wider ideal, viz., that of regulating the external acts, thoughts and motives of men. The influence of society on the individual is more far-reaching than that of the state. The individual is born in the society and is bred up by social forces like love, affection and fear and by social institutions like custom and competition,—all of which may be controlled but not created by the state.

### **State and Association.**

*Firstly*, the state is essentially a territorial organisation in the sense that the activities of a state are mainly confined to its territorial boundary. When we speak of any state, we refer to a particular territory. But the activities of an association need not be confined to a definite territory, an association may extend even over the whole world, e.g., the Roman Catholic Church.

*Secondly*, membership of the state is compulsory, while membership of an association is of a voluntary nature. An Englishman becomes a citizen of Great Britain as soon as he is born. He has no choice in the matter under ordinary circumstances. But he is free to change his school or club after giving due notice.

*Thirdly*, a man may become a member of as many associations as he likes but he cannot be a member of more than one state at the same time.

*Fourthly*, a state differs from other associations in so far as the aims and objects of voluntary associations are concerned. Voluntary associations are formed for the purpose of promoting a particular or at most, a few particular interests, whereas the state is concerned with the care of general rather than particular interests.

*Fifthly*, voluntary associations have generally a transient life. They may dissolve or break up due to various reasons. But the state endures for ever.

*Sixthly*, associations sometimes grow out of the needs of time; sometimes they are created by the state. But they exist only with the consent of the state. The state reserves to itself the right to dissolve them.

*Lastly*, voluntary associations lack the legal power of coercion. They cannot compel their members to obey orders. Associations can at most expel their members for disobedience or inflict some fines. The state, on the other hand, is vested with sovereign authority. It not only can fine, imprison or confiscate the property of a member who refuses to obey its orders, but in extreme cases, can deprive him of his right to life.

The state is therefore the most important association which supplements and supervises the activities of all other associations within society. It is an all-embracing, permanent and compulsory association, theoretically vested with almost unlimited power for the purpose of promoting the welfare of all the people.

### **State Sovereignty—Personal or Territorial ?**

The physical basis of the state is its population and territory both of which are essential to the formation of a state. "A state," says Woodrow Wilson, "is a people organised for law within a definite territory." Closely following the definition, it may be asked, "Is the state to be viewed primarily as a group of people or primarily as a definite area of territory?" If we regard the state primarily as a group of people, the sovereignty

of the state would be personal, while, on the other hand, viewed as an area of territory, the sovereignty of the state would be territorial. In the first case state sovereignty would be exercised over all its citizens wherever they might live. State sovereignty would then be extended even beyond national boundary. In the second case the sovereignty of the state would then be exercised over all persons within the national frontier—citizens and aliens alike.

The principle of territorial sovereignty of states has been recognised by modern states although certain exceptions are made in special cases. Ambassadors and Men-of-War enjoy freedom from the territorial jurisdiction of the state in which they may happen to stay temporarily. The principle has been recognised by all states and forms an important provision of international law which is generally observed by all nations. The principle of personal sovereignty of states has been abandoned altogether in recent times. Certain great European powers like Great Britain, France, Germany used to exercise their authority over their own citizens even when the latter lived in Asiatic countries. This extra-territorial jurisdiction empowered them to apply their own laws over their own citizens in foreign territories. Thus an Englishman killing a Chinese on the soil of China would not be tried by a Chinese court but by an English court according to English law. Such extra-territorial rights enjoyed by foreigners raised a storm of protest from the local people and ultimately the European powers were forced to surrender this illegitimate right. But remnant of this right still persists in the case of the law called *jus sanguinis* governing the acquisition of citizenship. A child born of citizen parents of a state becomes a citizen irrespective of the place of birth. This rule is at variance with the principle of territorial sovereignty of a state.

## SUMMARY

I The state comes into being when a number of people are organised politically in a particular territory

II The essential elements of the state are population, territory, government and sovereignty. Recognition by other states and more especially, membership of the United Nations

are now-a-days considered essential to the attainment of international statehood

In its aim and scope, society is wider than the state. The state is only an important association within society. In point of time also, the state is posterior to society.

### III *State and Government.*

(1) Government is one of the essential elements of the state but not the state itself.

(2) Government exercises the authority of the state

(3) State is abstract, Government is concrete

(4) State is permanent while governments may change

### IV *State and Society*

(1) Society is wider than the state which is only one of the many associations functioning within society

(2) Society does not require any fixed territory or government or sovereignty but these are indispensable to a state

(3) Society is clearly anterior to the state

(4) Society is all-embracing in character and indefinite in its aim. It regulates the whole course of a man's life. The state, on the other hand, has a limited scope and function in relation to the individual

### V *State and other associations*

(1) The state has territorial limits, other associations have no such limits

(2) Membership of the state is obligatory in other associations, voluntary

(3) An individual may become a member of several associations at the same time, but only of one state

(4) Other associations may come and go but the state goes on for ever

(5) The state stands for general interest, other associations for particular interests

(6) The state possesses almost unlimited authority over its citizens; other associations have no such power. They can persuade but cannot coerce

### VI *State Sovereignty—Personal or Territorial?*

The state, according to its definition, may be viewed either as a group of people or as an area of territory. In the first case, the sovereignty of the state would be exercised over all its citizens both at home and abroad. In the second case, the sovereignty of state would be exercised over all living within its territorial jurisdiction. With few exceptions, the principle of territorial sovereignty of states has been recognised in modern times



## QUESTIONS

1 Distinguish between (a) State and Government and (b) State and other associations.

2 Define a state and discuss whether the following should be regarded as states: (a) Canada, (b) New York, (c) Hyderabad.

3 Distinguish between State and Society. (Punjab, 1940, Agra, 1942 )

4 How do you distinguish the state from other kinds of associations? (C. U 1955 )

5 Discuss the *significance* and *meaning* of "territory" as a constituent element of the state What are the exceptions to the principle of exclusive jurisdiction of a state over its own territory? (C. U 1960)

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## CHAPTER III

### PEOPLE, NATIONALITY, NATION AND STATE

#### *References :*

- Zimmern—Nationality and Government, Chs. 2, 3  
Mill—Representative Government, Ch. 16.  
Ramasay Muir—Nationalism and Internationalism, Ch. 2.  
Buins—Political Ideals, Ch. 8.  
Garner—Political Science and Government, Chs. 6, 7.  
MacIver—The Modern State, Bk. one, Ch 4, Sec II  
Laski—Grammar of Politics, Ch 6.

**People.** “A people,” says Mackenzie, “is a group of individuals, not necessarily living together, but having a certain unity of traditions or sentiment” A people may not develop any political consciousness. Thus the Jewish people did not for centuries form a state.

**Nationality and Nation.** The terms ‘nation’ and ‘nationality’ are often used indiscriminately in popular language. But a distinction must be drawn between the two. The word ‘nation’ is derived from the Latin word *natio* meaning birth or descent. In its etymological sense, the word ‘nation’ therefore refers to a group of people descended from the same stock. But in modern political science, the two terms have acquired a new meaning. A nationality is defined as a group of people bound together by identity of race, language, religion or by community of interests, history and tradition, while a nation is a group of men united under the same sovereignty.

A nationality may be defined as a group of persons united together, by certain ties, as for example, race, language and literature, ideas, customs and traditions. They possess these characteristics in such a way as to constitute themselves into a coherent unity distinct from other populations. A nation is a nationality when it organises itself into a political body, either independent or desiring to be independent. When a nationality forms an independent political organization, i.e., acquires statehood, it becomes a nation. Thus the difference between

nation and nationality rests on the attainment of independent statehood. A nationality invested with political consciousness is a nation, and a nation divested of political consciousness is a nationality.

The term 'nation' has therefore a political significance attached to it, while the basic principle of nationality is a sentiment and as such spiritual. Nationalities cannot be ignored, although they may not have formed distinct states of their own. The British government can ill afford to displease the Scottish people who form an integral part of the British nation, though they constitute a separate nationality. An analysis of the definition of the three terms 'people', 'nationality' and 'nation' indicates that a people becomes a nation as a result of a process of political evolution. When a group of people is inspired by a common sentiment, they gradually develop into a nationality. A nationality becomes a nation as soon as the nationality is invested with a strong political consciousness coupled with the desire to unite under the same sovereignty.

### **State and Nation.**

The essential elements that go to constitute a state are population, territory, government and sovereignty. A state comes into existence where these four elements are present. But a nation is something more than a state. In order to be a nation, a state must have the feeling of oneness among its people. A nation is therefore the state looked upon from the point of view of the unity of the people organised in the state. We may conceive of the existence of a state without being a nation. The Austro-Hungarian Empire before the First World War was a state but not a nation. So was the Czarist Empire of Russia. They lacked the feeling of oneness among the people and hence were not nations. But the modern tendency both in theory and practice is to regard statehood dependent on nationhood. The two concepts are not mutually exclusive rather they are complementary to each other. When a group of people is inspired by the ideals of nationalism, when the members of the group passionately believe that they have a common destiny to reach and a common ideal to realise, they are sure to form a state of their own.

through which the ideal of the group will be realised. Thus the feeling of oneness is a factor that has exerted a tremendous influence in the formation of new states.

But this does not mean that statehood is absolutely dependent on nationhood. In the absence of sovereignty which is the most essential mark of the state, a people however organised or possessing the essential elements of nationality cannot attain statehood. The status of Germany and that of Japan after the conclusion of the Second World War were cases in point. They continued to be nations, though they ceased to be states. Nationality is a spiritual concept and as such subjective whereas statehood is objective and therefore it has a political significance attached to it.

Conversely, diverse races with diverse languages and religions may be welded into one homogeneous group under one state organisation. The U.S.A. and the U.S.S.R. are cases in point. Thus a nation may create a state and a state may also create a nation.

**Marks of Nationality.** Nationality, as we have seen, is a sentiment which characterises a particular group of men. This sentiment is the outcome of many forces which unite the masses into a homogeneous group. These are the ties of race, language, religion, geographic unity, common political, economic and cultural interests.

(1) *Identity of race* is held by many as a characteristic of most nationality. But recent ethnological researches have proved beyond doubt that there is hardly any race in the world which can claim itself to be the descendants of a single stock. The different races have been so intermixed with one another that it is impossible at this distance of date to separate one from the other. Besides, unity of race does not necessarily lead to the formation of a nationality. The Germans and the English belong to the same racial stock but they are quite distinct from the national point of view. Conversely, there are many races in the United States, but all of them are united together as 'Americans'. Thus our analysis shows that nationality is not dependent on the racial factor, although the bond of kinship,—or even a mere belief in a common origin con-

siderably influences the growth of the corporate sentiment of nationality

(ii) *Community of language* immensely contributes to national unity. Language is the vehicle of thought and when a people speak the same language, interchange of ideas and ideals becomes easier than when they speak different languages. But unity of language, like unity of race, is not essential. The Swiss people speak three different languages—German, French and Italian but in spite of their linguistic differences, they live in one state and have developed a strong national consciousness.

(iii) *Religion* was formerly considered to be an important factor that promoted national unity. But with the growth of the spirit of toleration and the rise of religious freedom, the influence of religion on the formation of nationality is definitely on the wane. Now-a-days people professing different religious faiths are living side by side in a nation, e.g., the German Catholics and the German Protestants. Religious unity therefore fosters national unity but is not to be considered as an indispensable element.

(iv) *Geographical unity* sometimes contributes to a healthy growth of national feeling. When a people occupy a definite territory, local contiguity promotes mutual sympathy and thus develops their nationality. But as with other factors, this is also not essential. Nationality is not lost or destroyed by migration. The Jews are regarded as a nationality although they are scattered throughout the world.

(v) *Common subjection and Community of economic and cultural interests* often promote the national sentiment. A common political ideal leads to the creation of a general nationality out of heterogeneous race elements as in Switzerland.

Thus we see that none of the above-mentioned factors is essential to the formation of a nationality. Then we might ask what constitutes nationality? Nationality cannot be exactly defined. Ramsay Muir has aptly remarked, "Its essence is a sentiment, and in the last resort, we can only say that a nation is a nation because its members passionately and unanimously believe it to be so." Race, language, religion, political aspirations—these no doubt stimulate the growth of

national sentiment but they are not nationality itself "Nationality," as Renan says, "is a spiritual sentiment, a condition of mind, a way of feeling, thinking and living which is the outcome of historical development" It "comes from the consciousness of wrongs and oppressions suffered through common subjection during a long period of time to a despotic government, the pride of a common share in great historic struggles and the possession of a common heritage and common traditions expressed in songs and legends" Race, language, religion, etc., are mere physical relationships but nationality is subjective Burns therefore opines that "Besides mere physical relationship, we have to reckon with the unity of traditions. A common memory and a common ideal—these more than a common blood—make a nation" That is the reason why the Swiss people are a nation in spite of their racial, linguistic and religious differences

**Character of Indian Nationality.** Students of political science are often faced with the problem of the character of Indian nation without any satisfactory solution Most of the Western critics have sought to prove that India is not a nation. India cannot claim identity of race, unity of language or sameness of religion Besides, as between the communities themselves, the homogeneity or community of tradition which is the real mark of nationality is here conspicuous by its absence The two principal communities of India, the Hindus and the Muslims, have not only different traditions, but an influential section of the Muslims was of opinion that the Muslims constituted a separate nation and hence they had a legitimate claim to form a separate state of *Pakistan* as opposed to *Hindustan*

It is unfortunate that in discussing the question of Indian nationality, the critics unduly emphasize the importance of the centrifugal forces to the utter neglect of the centripetal True it is that in India, there are many races, spoken languages and religions but considering the historical antecedents and the size of the country, these diversities may be taken to be natural and inevitable We admit that religion is striking a discordant note in the political life of the country but such differences existed in the past and still exist in some form or

other in many countries. Divergences of race, language and religion exist in the USSR, U.S.A. and in Switzerland. If we do not deny to these countries the character of a nation on the score of their diversities of race, language and religion, there is no reason why we should deny it to India. Besides, nationality, as we have seen, is psychological, it is a peculiar condition of the mind and as such it depends more on spiritual factors than on mere physical basis. A close and careful study of Indian history will reveal that there is a fundamental unity in India even in the midst of her diversities. Even a reactionary body like the Simon Commission did not fail to have been struck by this fundamental unity. The Commission in their report remarked, "It would be a profound error to allow geographical dimensions or statistics of population or complexities of religion, caste and language to belittle the significance of what is called the Indian National Movement." Hinduism, Buddhism, Islam, Christianity, all of them have played their part in time and have contributed to the growth of that sense of national unity which has gathered considerable strength during the course of its historical evolution. The Hindus and the Muhammadans have been living together for a long time in the past. Both the communities in many places have not only common languages but have developed common traits of character and have common economic and cultural interests. The quarrel between them is of recent growth and is the outcome of manipulation by interested parties. Besides, what is important in the formation of a nation is not mere physical relationship like race, languages and religion but a common memory in the past and a common ideal in future and it is this spiritual bond of union which has enabled the diverse race elements of the USSR to live together under the same sovereignty, thus setting up a new ideal before the world. Such a common memory and common ideal do exist in India. Besides, the common system of education, common laws and common methods of administration prevailing in India during British rule considerably helped the growth of a strong national consciousness throughout the country. What was uppermost in the mind of every Indian was the consciousness that he was bearing the burden of an alien government and his political aspiration was the attain-

ment of political independence. This aspiration of the Indians as a whole received a great impetus from the patriotic wars waged by different subject peoples of the East and the West and particularly by the achievements of the Indian National Army led by Netaji Subhas Chandra Bose. Nationality is a spiritual sentiment and it would be far from truth to say that the feeling does not exist in India. On the contrary the sentiment of nationality is gathering strength day by day and the Indians to-day are feeling very strongly that they constitute a nation. They are determined to build up a united state of India based on the principle of justice, equality and freedom for all, quite in keeping with her glorious past and an equally glorious future. But in spite of the fundamental unity, the country was divided into two states on the basis of late Mr. Jinnah's 'two nation theory'. The centrifugal force proved stronger than the centripetal one.

**Principle of One nation, One state : Its influence on practical Politics.** Nationality consists in certain sentiments and ideals which a group of men cherish in common. It is, in the last analysis, the consciousness of kinship among one group against the people of another group. The growth of this group sentiment and ideal may therefore be best promoted by giving them scope for establishing an independent political organisation of their own. This explains one of the main characteristics of modern age that people belonging to a particular nationality claim to have their own government organised according to their free will. This tendency of group development implies independent development of each distinct group of sufficient permanence and with enough of tradition. Each such distinct group is to acquire a national character and to have an opportunity for developing its own form of government.

It expresses, the ideal 'One nation, One state'. If states are organised on the basis of this principle, every distinct nationality will have its own independent government and every state will comprise one nationality only. Every nationality will then be in a position to develop on its own line without being unduly influenced by a superior power and much of the quarrels and misunderstanding between different



nationalities will die out J. S Mill was a staunch upholder of the ideal of mononational states In his 'Representative Government', he says that "It is in general a necessary condition of free institutions that the boundaries of governments should coincide in the main with those of nationalities"

### **Growth of the Principle of One Nation, One State**

The principle of nationality therefore produces an integrating as well as a disintegrating tendency Thus while, on the one hand, it tends to unite a group of men together, it produces, on the other, a separatist tendency. The principle is of comparatively recent origin although in the ancient groups of men, the sentiment of nationality existed in a rather crude form. Ancient unity was fed more by kinship, religion and tribal feeling than by an active desire for political freedom. In the Middle Ages, the feudal system was unfavourable to the growth of national unity inasmuch as the imperfectly developed feeling of nationality was quite insignificant in comparison with the preponderating interests of the feudal kings Hence it was not the interests of the nationality rather the interests of the rulers which used to determine the boundaries of states and policies of rulers The Renaissance which followed feudalism strengthened to some extent the solidarity of the states into which Europe was divided but this solidarity was used more for consolidating the authority of the established dynasties than for substituting the sovereignty of the people for the sovereignty of the ruler

Of the factors contributing to the growth of the national sentiment, special mention must be made of the great Italian nationalist Machiavelli whose writings kindled the flame of nationalism not only among the Italian people but influenced the nationalist movement in other countries as well During the whole of the sixteenth and seventeenth centuries, the sentiment of nationality as embodied in the will of a group sought to make its influence felt by the government in every country and in general there were certain forces at work which gave it a new vitality "The influence of education and general enlightenment," says Garner, "together with the development of political consciousness and love of liberty, were not the least of these"

The *Partition* of Poland in the latter part of the eighteenth century transformed the ideal from a mere sentiment to an active force in practical politics. The fault of Poland was that in an age of dynastic absolutism, she maintained a system of elective monarchy which was forcibly terminated by the rulers of Austria, Prussia and Russia. But the partition succeeded only in destroying the body and not the soul which began to wander in search of a body in which to begin life over again ! The flaming fervour of patriotism which inspired the Poles to launch a ceaseless struggle for restoring their independent political existence succeeded in establishing an independent state of their own after the conclusion of the First World War.

The *French Revolution* followed by Napoleonic conquests contributed, in no small measure, to the growth of the sentiment of nationality. The French Revolution with its clarion cry of 'Liberty, Equality and Fraternity' made people conscious of their inherent rights while Napoleonic conquests united like groups of people to stand up for their individual as well as their collective rights. But unfortunately the problem of nationality did not receive its due share of attention from the peace-makers who assembled in the Vienna Congress after the defeat of Napoleon.

The old Russian, German, Austro-Hungarian and Turkish Empires contained many nationalities whose desire for political freedom was ruthlessly crushed by the sovereign power. But during the nineteenth century, the ideal took a different turn. The spirit of self-determination was so long a sentiment, at times very strong, but since 1848, it became an active force and burst out in the form of several revolutions which helped create the new states of Belgium, Greece, Serbia, and Rumania. The First World War was fought, it is said, to make the world safe for democracy and the right of nationalities acquired a new meaning and a renewed impetus in its application to practical politics.

President Woodrow Wilson stressed the necessity of the application of the principle in the re-organization of states and as a result of the application of the principle to practical politics, new national states sprang up into existence out of the ruins of the old polynational states. Thus the Baltic

states of Estonia, Latvia, Lithuania, Finland and the Central European states of Poland, Czecho-Slovakia, Yugo-Slavia came into existence.

But the Versailles Peace-Makers recognised the claims of the nationalities of Europe but completely ignored those of the down-trodden nations of Asia and Africa. Dissatisfaction is contagious and soon after the outbreak of the Second World War, practically the whole of the East was lit up with fires of nationalism. India, Burma, Ceylon, Indonesia, Egypt and a few others emphatically put forward their claims. Thus the right of a nationality to self-expression and self-development which was so long a monopoly of the civilized whites was extended to the Afro-Asian people.

### **Right of Self-determination.**

The sentiment of nationality, as has been pointed out above, involves a separatist tendency which finds expression in the claim of every nation to exercise the **right of self-determination**. Self-determination is therefore the direct outcome of the nationalistic spirit which through centuries of its struggle for active expression at last came to be recognised. The right implies that each nation has an inherent right to be completely independent or at least "to be accorded a large political autonomy" where it forms part of another nation in the same state. In its extreme form the right means that each nationality should form a single state and a state will contain only people of one nationality. "Self-determination", President Wilson observes "is not a mere phrase. it is an imperative principle of action, which statesmen will henceforth ignore at their peril". Self-determination is essentially based on a democratic ideal inasmuch as it recognises the claim of a group of people to determine its own form of government. The right of self-determination is therefore mainly a problem of reshuffling the existing states on a new national basis and the question is whether it would be practicable or at any rate desirable for all existing states.

The right of self-determination, however, should not be carried too far. Mill advocated the theory of mono-national states but he admitted that this ideal was not always applic-

able to practical politics. There are several limitations to the right of self-determination.<sup>(1)</sup> In the first place, natural barriers like high mountains, roaring oceans and impassable forests may separate one part of the people from the other and prevent their union under common sovereignty. Thus the different nationalities are so intermingled with one another in many states that it is almost impossible to organise each of them into a separate state. But what was considered neither desirable nor practicable a century ago is now considered not only desirable but also practicable under stress of circumstances. Several cases of large scale exchange of population took place during the period after the First World War. An exchange of population was effected between Turkey and Greece at the initiative of the Turkish leader Kemal Atatürk. Exchange of population also took place between Germany and Poland, between Germany and Czecho-Slovakia and in recent years, the world witnessed a migration of population on a gigantic scale that preceded and followed the partition of India into Pakistan and Indian Union.<sup>(2)</sup> Secondly, political, economic and cultural unity may, at times, prove stronger than the unity of race or religion. Switzerland is a case in point.<sup>(3)</sup> Thirdly, if the right of self-determination is granted to every nationality without reservation, it will lead to the dismemberment of some of the old existing states of Europe. The unrestricted recognition of this right will create 68 states in Europe in place of the 28 states of today. Thus England and Switzerland, each will be split up into three. The right, if pushed to fantastic extreme, will encourage the emergence of many minor groups called nationalities as fragments of a nation. The worst form in which the tendency has revealed itself in some countries is that it places exaggerated importance upon the differences between man and man and in this way local institutions and provincial history and culture are studied with veneration and declining and moribund languages are revitalised with great zeal with the result that it intensifies group jealousy. Thus the Czechs, Slovaks and Slovenese in Czecho-Slovakia, the Jews and Arabs in Palestine and the Karens in Burma claim the right. The economic and financial problems arising out of undesirable separation have proved almost baffling to both India and Pakistan.

Fourthly, the creation of small and weak states is likely to aggravate mutual jealousy and to make war more frequent. Fifthly, self-determination may be a moral right but not a legal one because this is inconsistent with the true theory of sovereignty. The grant of the right depends not so much on the will of the dissentient nationality as on the sovereign state of which it forms a part. This point was clarified and recognised by a committee of Jurists appointed by the League of Nations on the question of separation of Åland Islands from Finland in 1920.<sup>16</sup> Lastly, it is not always true to say that mono-national states are better governed than polynational states. On the contrary, backward and incapable people may gain great advantages by coming in contact with an advanced people under the same sovereignty. The achievements of Switzerland and the USSR containing men of diverse nationalities give a lie direct to Mill's proposition that "Free institutions are next to impossible in a country made up of different nationalities." But the right should be granted in cases of forceful annexation of one state by another. Thus the grant of independence to the Poles, the Czechs, the Irish, the Indians and the Burmese should not be considered as acts of mere concession on the part of the givers but a move in the right direction towards the cause of peace and the advancement of the common civilisation of mankind. The right of self-determination should also be extended to those nationalities which constitute a substantial fraction of the population of a country, although the right is not recognised as a legal right.

### Other Rights of Nationalities.

(1) *Right to exist*—The right of self-determination may not always be conceded to all nationalities but all writers agree that nationalities have other important rights which, under no circumstances, should be denied to them. The 'first and most natural' of those rights is the right to exist. The right to exist implies that no attempt, direct or indirect, should be made by the sovereign state either to denationalise them or to suppress the individuality of the nationalities. Every nationality should be allowed to maintain its corporate existence.

(ii) *Right to language*—Common language promotes national unity and therefore it is considered to be a moral right of a nationality to retain and speak its native language and to use it as a medium of instruction to children and also as the medium of expression in their Literature. But it should be noted that a nationality forming a small proportion of a state cannot claim the use of their language for state purposes.

(iii) *Right to local laws and customs*—A nationality may have a right to preserve its local laws and customs provided such customs and laws are not contrary to the prevailing moral sense or the policy of the state. After the conclusion of the First World War, the League of Nations was authorised to look after the interests of small nationalities through its Mandates Commission.

(iv) *Right to Legal and Political equality*—Lastly, the members of a national minority in a state should be accorded legal and political equality. Equal protection under the law, the right to vote and the right to hold public offices, if properly qualified, should be granted to all citizens, irrespective of race, religion or nationality. But it should be noted that no claim to special privileges for safeguarding minority interests should be entertained.

### **Nationalism, Imperialism and Internationalism.**

(i) *Nationalism*—Nationalism is usually defined as a sentiment of a nation but in reality, it is more than a mere sentiment. Originating in the gregarious instinct of man and nourished by the rational desire for self-government, nationalism has come to be an active force in practical politics. As Lord Morley remarks, Nationalism "from instinct became idea, from idea, abstract principle, then fervid prepossession, ending where it is today in dogma, whether accepted or evaded." Nationalism promotes the feeling that every man owes his first and last duty to the nation and that the nation-state is the ultimate unit of human organisation. It is this belief in the ultimate unity of a like group of men which led to the disruption of many multi-national states giving rise to too many states on mono-national basis. Thus it brought

freedom to the Italians, the Poles, the Czechs, the Indians and a host of others

Nationalism is therefore a democratic ideal inasmuch as it is opposed to all those forces which impede the growth of group-personality. If individual liberty is recognised as a precious possession for the fullest development of all that is good in the individual, there is no reason why should not the liberty of a nation be considered so? If each nation gets the opportunity of perfecting its own system of law, civilization and culture, each will be in a position to contribute its best to enrich the common stock. The world as a whole will be benefitted by such mutual give and take. Thus nationalism is a great liberalising force which unifies and elevates and seeks to preserve and promote all that is best in a nation. It breeds self-confidence in a nation and self-confidence is the foundation of constructive activity.

### Dangers of Nationalism.

But this is not the whole story. Nationalism is no doubt a great force which attracts like groups but repels groups that are unlike. It has thus the double aspect of altruism and egoism. The separatist tendency inherent in nationalism has given rise to two serious evils. Within the nation itself, it sometimes reveals itself in the form of a parochial patriotism which accentuates the difference between man and man by placing an exaggerated importance on local institutions, moribund languages and provincial history and culture, the effect of which is that many minor groups, called nationalities, spring into existence as fragments of a nation.

But the most serious evil to which nationalism is a prey, has arisen out of modern capitalism. Nationalism developed in an age of self-sufficiency of states finds it difficult to maintain its position when no nation is self-sufficient,—when no nation can either produce or consume all that it requires. The growth of mammoth industries for the production of capital goods, consumer goods and war materials has made it necessary for every state to find out a market or markets where to buy raw materials and to dispose surplus goods for a profit. This economic motive coupled with the desire for more poli-

tical power led to the conquests of colonies and dependencies in various guises. Thus the whole of Asia and Africa fell under the greed of nationalism of the West. In the heat of their scramble for colonies, these Western powers indulged in all sorts of mutual recriminations culminating in devastating wars. This form of nationalism derives its justification and support from a ready-made philosophy which teaches people not to defy the state and enjoins upon them the duty of passive obedience to the state. It also seeks to console the unfortunate colonial people by such high-sounding phrases as 'Politically weak and incapable people must submit to the guidance and tutelage of the stronger and more endowed nations.' This is the philosophy which lent countenance to the German push towards the East, the Italian conquest of a part of Africa, the expansion of England throughout the world and the divine mission of Japan. The latest phase in which this form of nationalism has manifested itself is international in its scope and seeks to dominate other nations economically through devices like Lease and Lend, Marshall plan and the like with the knowledge that economic dependence will, in the end, cripple the political freedom of small nations, reducing them to subservient satellite states.

Thus nationalism organised as the nation-state produces what is known as chauvinism or bellicose nationalism. This deserves unqualified condemnation from all. The evil effects of perverted form of nationalism is that it creates hostilities between groups, supports militarism, clamps progress and makes a powerful nation more powerful. It produces a feeling that the laws and civilization of one's own country are superior to those of others and may therefore be rightly imposed upon a politically weak and incapable people. This gives rise to what is called imperialism.

(11) *Imperialism*—It means a creed which believes in a single system of government, irrespective of different races, countries, civilization and culture. It implies the existence of numerous groups of men using in different lands a uniform system of law and government. The essence of imperialism is 'unification and assimilation'. Imperialism may be justified only when it is helpful to a backward people in their forward march to economic and political progress.



Imperialism is the foster child of aggressive nationalism. In its worst form, as it has revealed itself in the West, it stands for war, forcible domination and ruthless exploitation of the weaker peoples of the world by the stronger. It is a danger to man and a menace to civilization.

The evils of imperialism may to a great extent, be combated by striking a mean between nationalism and imperialism and this can be effected only through *federalism*. Federalism implies the idea of a decentralised state with independent local governments. This is the only form of government which can suit the requirements of a big state.

(ii) *Internationalism*—Internationalism is not purely a political idea but a spiritual or moral idea as well. It has a lofty aim inasmuch as it seeks to secure peace for all nations and for all times. The object of internationalism consists firstly in the outlawry of war and secondly in the removal of the disabilities and sufferings of the weak nations of the earth. It preaches the ideal of a federation of world-states based on the principle of universal brotherhood of nations.

Internationalism is promoted by international morality, international law and international trade. Moral laws vary from age to age and from place to place but there are certain common principles of morality which hold good universally in all ages. These common codes of morality regulate, to a great extent, the mutual intercourse of different nations. International law enforces the right of equality among all states and thus paves the way for co-operation between small and big states. International trade brings a state in contact with other states and produces a feeling of mutual interdependence among states themselves. It is the idea of sovereign state that militates against the ideal of internationalism.

Internationalism is not hostile to the spirit of nationalism as is generally supposed to be. It implies the idea of a federation of world-states which, at the same time recognises the inherent rights of every nation to its fullest self-expression and self-development. The essence of internationalism is 'the recognition of their freedom to preserve their distinct languages, culture, etc. in order that all causes of all conflicts between nations may be minimised'. Internationalism does

not, therefore, oppose the idea that we belong to ourselves but what it opposes is its perversion, namely, we do not belong to you. It is only the wholesome effects of the right type of education that can lead to a fuller and better understanding between different nations. It is only on the basis of mutual trust and goodwill that the edifice of internationalism can be built

## SUMMARY

Primarily the term 'state' is a political concept, while 'nation' is an ethnic concept. Nationality is subjective, while statehood is objective. Nationality is a condition of mind, statehood is a condition of law.

### *Nation and Nationality*

Common racial origin, common language or religion or community of economic and political interests are not good tests of the existence of a nation. These are physical conditions which no doubt promote the sentiment of nationalism. A common memory and a common ideal—these more than a common blood—make a nation.

It is very difficult to say to what extent these bonds of unity exist in India. India presents unity in diversity and there are unmistakable signs of a growing national feeling in India and this feeling has succeeded in securing freedom for India.

### *One Nation, One State*

The principle of nationality was disregarded by the Congress of Vienna (1815) and since then the sentiment had been steadily gathering strength. To-day its claim to form new law-states on national basis is almost irresistible. Every nation tends to organize itself into a state. The principle was accepted by the Versailles Peace Conference after the conclusion of the First World War. After the conclusion of the Second World War, the peoples of the East succeeded in winning their lost freedom.

### *Right of Self-determination*

The right of every nationality to organize itself into a state is known as the right of self-determination. But this right is not absolute. The creation of too many weak states is likely to disturb international peace. Besides, small nations cannot possibly organize independent states of their own. An independent state of the Welsh people without England and Scotland is almost unthinkable.

Poly-national states are not necessarily weak. On the other hand, there is more popular freedom in poly-national states.

Inferior races and old and decaying nations may make progress by living under one government with races intellectually superior. The U S S R is a case in point.

### *Nationalism and Internationalism*

Nationalism, in its pure form, implies love for one's own country. But when the love which one group of people feels for their country leads them to differentiate their interests from those of other communities, it degenerates into its perverted form. Egoistic nationalism breeds imperialism and prompts one nation to seek its interest at the cost of others. Thus imperialism is the mother of war. Federalism can check the tendency to imperialistic greed of nations by the establishment of a common government at the centre. Internationalism is the highest political ideal inasmuch as it seeks to establish perpetual peace by the avoidance of war and by preventing the domination of the weak by the strong. 'Live and let live' is the ideal of internationalism.

## QUESTIONS

1 Discuss the importance of the 'Principle of Nationality' in the organization of modern states

2 What is meant by Nationalism? Is the idea of Nationalism compatible with the existence of an International Order? Give reasons for your answer. (C U Hon 1952)

3 What are the rights of nationality?

4 What are the factors that tend to create a Nationality? How does a nation come into being in a country of diverse Nationalities? (C U 1957)

5 Discuss the value and limitation of Nationalism as a Political Ideal. (C U Hon 1954)

6 Discuss the factors that create a sense of unity in a state. (C U 1954)

7 (i) "The state creates the Nation"

(ii) "The Nation creates the State" (C U 1954)

8 Discuss the value and limitation of the doctrine of self-determination as a political principle. (C U Hon 1955)

9 What is meant by the doctrine of self-determination? Discuss in this connexion the value and limitations of the doctrine. (C U. 1958)

10 What are the implications of the Ideal of Nationalism? How far do you agree with the view that this Ideal is "necessarily wrong and obstructive to progress?" (C U Hon 1957)

11 What are the essential factors that tend to constitute a group of people into a nationality? How does a nation come into being in a country of diverse nationalities? (C U 1959)

## CHAPTER IV

### THEORIES OF THE ORIGIN AND NATURE OF THE STATE

#### *References*

- Lowie, R. H.—Origin of the State.  
A. R. Lord—Principles of Politics, Ch. II  
W. W. Willoughby—The Nature of the State Chs 3, 4.  
I. Brown—English Political Theory  
Joad—Modern Political Theory, Ch. I  
Gilchrist—Principles of Political Science, Chs 3, 4  
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Sabine—A History of Political Theory, Chs 23, 26

✓ **Theories of origin**—We do not know exactly when and how the state came into existence. Different writers have advocated different theories regarding the origin of the state. The methods of enquiry adopted by them are mainly two, viz., the philosophical and the historical methods. In the absence of definite historical records, our knowledge regarding the origin of the state depends much more on speculation than upon historical records. There are three philosophical theories of the origin of state, namely, The Divine Right Theory, The Theory of Social Contract and The Theory of Force. The Historical Theories are two in number, viz., The Patriarchal and Matriarchal Theories and The Historical or Evolutionary Theory.

✓ **The Theory of Divine Right**—This is the oldest theory regarding the origin of the state. It attributes the origin of the state to the will of God. The early Jewish theocracy was founded upon this notion. Another view is that the state is founded by God but governed indirectly by Him through Kings who act as the viceregents of God on earth. There are four implications of the theory: (a) Monarchy is a divinely ordained institution. (b) Succession to the throne is regulated by the law of primogeniture. (c) Kings and rulers are accountable to God alone and not to any earthly authority. (d) Non-

resistance and passive obedience are duties enjoined by God upon the people

*History*—The belief in the divine origin of the state was extant in ancient India, Egypt, China and in Japan. The Greeks and the Romans, however, never accepted the theory. Christianity may be said to have supported the theory. In the Middle Ages, when the Church and the State fell out, the theory was advocated by the pro-papal and pro-monarchist writers to prove the superiority of the respective claims of the Church and the State. In England, the theory found ardent advocates in Sir Robert Filmer and King James I. The latter wrote a book in support of this theory. Even as late as 1815, the Kings of Prussia, Austria and Russia, when forming the Holy Alliance, declared that they were appointed by God to rule their subjects. Thus the theory of Divine Right was used in the Middle Ages as a defence for the supremacy of the papal authority. Subsequently, the same theory was used by kings and rulers as a bulwark against the growing political consciousness of the people who wanted to overthrow dynastic rule. With the rise of the Social Contract theory, the theory of Divine Origin of the state was discarded.

*Criticism*—The theory has been severely criticised on the ground that the state is a human institution and as such it would be wrong to attribute divinity and super-natural character to the state. Secondly, the theory can explain only one form of government, viz, monarchy but fails to explain the position of an elected president. The theory is dangerous as well because it makes the ruler all-powerful and unaccountable to any body and thereby justifies the arbitrary exercise of royal powers.

*Evaluation*—Although nobody now seriously believes in the divine origin of the state, the theory points out certain important truths. It taught men the virtue of obedience and discipline in the days of anarchy when obedience and discipline were badly needed. The theory also helped to make political authority independent of the control of religious authority. Thirdly, the theory emphasizes the moral end of the state and points to the fact that the state started its career under religious influences and up to certain stages in its evolution,

it had a distinct theocratic cast. Lastly, it emphasizes the fact that kings and rulers, in addition to their legal responsibility, have a moral responsibility as well

### *Decline of the Divine Right Theory*

The Divine Right Theory is now an exploded dogma. Several factors contributed to its decline of which the advent of the social contract theory is the most important one. The social contract theory forcefully inculcated the doctrine that the state is a human contrivance and that the authority of the ruler is derived from the people and not from God. This idea gradually gained ground and completely shattered the idea of the divine origin of the state. Secondly, the Reformation Movement which curbed the power of the Papacy and helped to establish the authority of the rulers in worldly affairs contributed, in no small measure, to the decline of the Divine Right Theory. The Reformation enabled men to take a rational view of religion by emancipating men's mind from crude ideas and superstitious beliefs born of the religious teachings and injunctions of the Middle Ages. Lastly, the growth of democratic ideas which taught that will, not force, is the basis of the state dealt a crippling blow to the Divine Right of kings.

### *The Social Contract Theory.*

The Theory is one of the most important theories regarding the origin of the state. The theory implies two things. firstly, it seeks to explain the origin of the state, and secondly, it attempts indirectly to define the relation between the ruler and the ruled. Thus it is a theory both about the *origin* and *nature* of the state.

The theory ascribes the origin of the state to a contract entered into by men living in a *state of nature* where there was no law and order. The essence of the theory is that before the emergence of the state, men lived under conditions described as a state of nature, uncontrolled by any laws of human prescription. In such a society, men were guided by regulations supposed to be prescribed by nature itself and as such the laws were unwritten. Writers have taken either a gloomy or a bright view of the supposed state of nature. The

state of nature being inconvenient for many reasons, people abandoned the state of nature by a voluntary agreement which transferred them to the protection of all against possible rapacity of each. Natural laws were now replaced by man-made laws. Political authority was thus established as a result of the deliberate and voluntary agreement of the community by which the originally independent individuals subjected themselves to the will of either the whole community or of a particular person or group of persons.

*History*—The theory is a very old one, mention of which may be found in the writings of the Greek philosopher Plato and of Kautilya, the Indian author of the famous Arthashastra. The theory found favour with many of the anti-monarchical writers. Richard Hooker was an ardent advocate of the theory. Other writers like Grotius, Milton, Blackstone, Kant, Fichte and Burke also developed the theory. But the theory received a special prominence in the hands of three writers, namely, Hobbes and Locke in England and Rousseau in France.

But as the trio of the Social Contract used the same theory to serve different purposes, they interpreted the theory in their own way. But they were at one so far as they believed in the existence of a *state of nature* and a *contract* which marked the beginnings of political life by the termination of the state of nature.

*Hobbes*—In his <sup>explanation</sup> exposition of the state of nature in his famous book "Leviathan," Thomas Hobbes is very precise and ruthless. The state of nature, according to Hobbes, was a state of constant war among mankind. There was neither any law nor any kind of justice in that state. Force and fraud were the basic principles of human life. Man was depicted by Hobbes as "solitary, poor, nasty, brutish, short." Might was the only basis of right. The state of nature thus being intolerable, men escaped out of that intolerable situation by means of a voluntary agreement. According to him, men met together and entered into an agreement by which they established an authority to which they irrevocably and unconditionally surrendered all their rights. The authority thus established might be a single person or an assembly vested

with unlimited powers. The implication of Hobbe's theory is that the ruler is the outcome of the contract and not a party to it and as such he cannot be bound by the terms of the contract. The people do not reserve to themselves any right,—not even the right of revolution against the sovereign. To go against the monarch implies violation of the terms of contract and thereby the people will only revert back to the state of nature. In this way, Hobbes justified the Stuart despotism in England.

According to him, therefore, one single contract established both state and government and consequently, the dissolution of the government led to the dissolution of the state. He laid stress on the legal sovereignty of the state but failed to recognise the political sovereignty. The truth is that Hobbes, utterly disgusted with the conflict for sovereignty between King and Parliament and obsessed by the dangers of frequent revolutions, found in the social contract a basis for a theory of absolute sovereignty. According to him, there were but two alternatives open to mankind—subjection to the common authority or chaos of the state of nature. In his eagerness to end the riot of the passions of men, in his solicitude for restoring law and order, he had no compunction in concentrating all powers upon the sovereign. A question which naturally arises at this point is that what did men gain by transferring under the covenant all their rights to their sovereign? Did their lot improve in any way? In the state of nature, men were in a state of war, when every man's hand was against every man and here in the civil state, they were no better than a pack of dumb driven cattle, reduced to a common obedience. So the theory of Hobbes "is a theory of unadulterated despotism or it is nothing."

*Locke*—Locke wrote his 'Treatise on Civil Government,' to justify the cause of limited monarchy. He also started with a state of nature—which, quite unlike that of Hobbes, was a state of peace, reason, and goodwill. But as there was no man-made law and no impartial authority to adjudicate upon the disputes, people were led to enter into a contract to form a civil society. When a civil society was thus formed, they made another contract, a governmental compact with the king



to the effect that he would be entitled to obedience so long as he protected life and property. Thus according to Locke there were two contracts, the one formed a civil society; the other instituted a particular form of government, *viz.*, monarchy. The monarch was a party to the contract and in case he violated the terms of the contract, the people retained to themselves the ultimate power of deposing him. The surrender of rights, according to him, was only partial. Thus Locke supported the English Revolution of 1688. He fully recognised political sovereignty but gave a subordinate place to the legal sovereign. He, however, clearly distinguished the state from the government which Hobbes failed to do. Thus if the theory of Hobbes is carried too far, it will annihilate individual liberty, if the theory of Locke is pushed to its logical extreme, it will destroy authority of the state.

Locke simply restated the theory of social contract in order to bring it into harmony with contemporary political thought when absolutism was beginning to break. Men had already begun to view the irrevocable character of the covenant with suspicion. They thought and insisted more and more upon the mutual observance of the contract. Hence he made the community the sole depository of the supreme power for "saving themselves from the attempts and designs of any body, even of their legislators, whenever they shall be so foolish or so wicked as to lay and carry designs against the liberties and properties of the subject."

*Rousseau*—The theory of Rousseau was propounded in his 'Social Contract' published in 1762. Rousseau tried to reconcile the ideas of Hobbes with those of Locke,—to strike a mean between the authority of the state and liberty of the individual. Rousseau also started with 'the state of nature'. He depicted the state of nature as an era of idyllic felicity. Men lived free, healthy, honest and happy lives in the state of nature. Gradually with the progress of civilisation, the lives of men became more and more artificial and degradation set in. Lastly, the diabolical device of private property in land destroyed natural equality among men. The increase of population made it necessary for them to have an organization. Men entered into a contract to the following effect.

"Each of us puts his own person and all his powers in common under the supreme direction of the General Will, and in our corporate capacity, we receive each member as an indivisible part of the whole." The authority that was created was placed not in the hands of the ruler as was done by Hobbes and Locke but it remained with the Community,—the whole people assembled in a mass meeting to express the General Will. The Government was created by a subsequent legislative enactment with delegated power from the people. The General Will is vested with unlimited power by Rousseau. Thus his General Will is as monstrous as Hobbes' 'Leviathan'.

Rousseau wanted to make the theory of Social Contract serve for the new age and simply developed by the method of Hobbes the conclusion of Locke. Hence he only shifted the seat of power from the monarch to the people. The secret of Rousseau's doctrine is the conception of *General Will*, whose exercise transforms mere government into self-government. Rousseau is at great pains to distinguish between the general will and the will of all. The general will is the transmuted and sublimated essence of all that is best in the wills of all but it is different from a mere arithmetical sum of individual wills. Society, according to Rousseau, is an integral unity, and the consciousness of unity arises out of the sense of common interest or welfare. There is present in every society this identity of interest, which, it is the duty of every government to secure and to promote. Nothing short of the enhancement of the common interest can therefore be the true criterion of the true sovereign.

Although Rousseau defined his 'general will' in the sense of the 'will for the general good,' in practice, however, it tends to be identified with the 'will of the people' which implies majority rule. Again a whole people cannot legislate except in a tiny city-state. So Rousseau's 'general will' is an impossibility in modern states. In modern times, it roughly corresponds to enlightened public opinion on any questions of public interest.

Thus the same Social Contract theory was used for different purposes by the three writers. In the hands of Hobbes, the compact was an act of surrender on the part of

the many to one or a number and consequently became a weapon of royal absolutism, in the hands of Locke, it became an instrument of individual liberty, with Rousseau, the contract was an act of association among equals who also remained equals after the formation of the state. Thus Rousseau stands for sovereignty of the people.

✓ *Criticism*—The Social Contract theory has been subjected to a number of searching criticisms. The doctrine is unhistorical. We do not come across a single example in history of a state formed by a contract. Men never led an isolated life as is supposed by the theory. The Mayflower compact of Nov. 11, 1620, by the first settlers in America is cited to prove the truth of the theory. But it may be pointed out that this body of emigrants did neither live in a state of nature nor did they create a new state. They were already members of a civilized state. They simply left one state and settled down in another.

The theory is illogical too. The idea of contract presupposes a political consciousness which can hardly be expected of men living in a state of nature. If the people did not know anything about state or society, how could they have formed a complex social organization like the state? Besides, the idea of contract is too refined to be grasped by primitive people.

Again, the idea of 'natural rights' or 'natural liberty' is itself fallacious. T. H. Green points out that the theory proceeds on the false assumption that persons, before the existence of a government, could have rights to surrender. There cannot be any right unless there is some authority to protect the rights. Right therefore implies society, society implies, if not political government, at least the germ of it.

Sir Henry Maine, the leader of the Historical School of Jurists, also criticises the theory. Primitive society, according to him, rested not upon contract, but upon status and the progress of human society has been from status to contract and not from contract to status. Contract is the goal and not the starting point in the development of society.

The theory looks upon the state from a wrong point of view. It represents the state as a mere partnership as in a

joint-stock company But the bonds that bind the members of the state together are certainly stronger than mere contractual obligation.

The theory is also dangerous. Either it inculcates a duty of passive obedience to the ruler, a doctrine favourable to despots or it leaves the state and its institutions at the mercy of individual caprice,—a doctrine favourable to anarchy.

Lastly, the objection raised by David Hume against the theory of Social Contract points to its logical inconsistency. According to him, a sense of advantage to the individual of peace and order in social life is, in the last analysis, the reason for the general submission to established authority. It is not contract but utility which is the determining motive behind the process of state-building. Again, other writers point out that even if a contract was made by our primitive forefathers, that contract could not possibly bind the posterity. The assent of the father cannot necessarily be the assent of the son.

✓ *Evaluation*—As an explanation of the origin of the state, the theory of Social Contract is now entirely discarded. Nevertheless, it is not entirely valueless to us today. The theory contains some important elements of truth which exerted a tremendous influence at the time when it was invented and holds good even now-a-days. The Social Contract theory like the theory of human equality is not true in its literal sense. It does not mean that our society originated in an actual contract signed and sealed by accepting parties. It is not actual contract but it is the idea of contract that is the all-important fact in the theory. It is this idea that can keep society secure and government stable. The theory came by way of protest against the divine right of kings and it emphasizes the fact that the state is a human institution and that the relation between the ruler and the ruled is one of reciprocal rights and obligations, of protection and obedience. The state, according to this theory, is the result of voluntary co-operation and not the creation of force. The theory also emphasizes the importance of the individual in society and recognises the fact that political institutions exist for man and these may be modified by human efforts according to needs. The practical utility of the theory found expression in the

famous saying of T. H. Green, "Will, not force, is the basis of the state" In its fundamental aspect, therefore, the theory is essentially a theory of liberty which marked the final triumph of the democratic ideal that all governments rest on the consent of the governed.

### **Influence of the Social Contract Theory.**

Every political theory is the outcome of a practical need,—a need felt at the time when it is invented. Just as in the Middle Ages, the theory of Divine Right was invented to act as a check upon papal aggression, similarly, the Social Contract theory was invented for establishing the right of resistance on the part of the people to despotic rulers. The theory emphatically asserted that irresponsible rulers who failed to promote the interests of their subjects could have no claim moral or legal, to the allegiance and obedience of the subjects. The theory not only contains an important element of truth but also exerted a tremendous influence in moulding the form of the constitution of the state. The theory was used as a violent weapon by the English people when by a resolution of the special convention in 1689, they dethroned James II on the ground of the wanton breach of the original contract by the King.

The greatest influence ever exerted on practical politics by any single political theory was perhaps that of Rousseau's 'Social Contract' which might be rightly regarded as the forerunner of the American War of Independence and the French Revolution. The cry of 'Liberty, Equality and Fraternity'—the watchword of the French Revolution, travelled from shore to shore and inspired the people with a new political ideal. The conception of the state as a power-system based wholly on might gave place to that of the state as a welfare system based on the consent of the governed. The ideal preached by this theory has been acting as a never-failing source of inspiration to down-trodden nations to win their lost freedom.

The idea of contract is also implied in the organisation of a federal government where autonomous units gain great advantages by creating a new state by amalgamation. The component states agree to surrender their rights in all matters

of common interest but retain some amount of local autonomy. But the analogy should not be carried too far as no new state can be created by the contract.

### **Points of Agreement and Difference between Hobbes, Locke and Rousseau**

#### *Points of agreement*

1. Hobbes, Locke and Rousseau sought to explain the origin of the state in terms of a contract which also served as the basis for determining the relation between the government and the governed

2 They were at one in so far as they believed in a state of nature in which men lived before the emergence of the state

3. All the three writers were of opinion that the inconveniences and the uncertainties of the state of nature were removed by means of the contract.

4 The trio attributed the origin of the state to a voluntary agreement and as such the state is a human institution as opposed to a divine institution

#### *Points of difference*

1 Although the three writers begin with the life of man in the state of nature yet they differ fundamentally in respect to the condition prevailing in the state of nature

According to Hobbes, man's life in the state of nature was rendered intolerable by mutual strife and in the absence of any man-made law, might was the only basis of individual right. The inherent selfish and egoistic nature of man always impelled him to seek his own interest at the cost of others. Hence the state of nature was a state of constant warfare among mankind

Locke described the state of nature as an era of peace, happiness and equality. Men's lives were not torn by internal strife

To Rousseau, the state of nature was an era of earthly paradise characterised by liberty, equality and fraternity for

all But with the increase of population and the progress of civilization, the original state of nature degenerated into one of inequality and mutual strife akin to that of Hobbes

2 According to Hobbes, the state of nature was pre-social rather than pre-political, according to Locke, it was pre-political rather than pre-social, according to Rousseau, the first stage of the state of nature was pre-political though it degenerated into a pre-social stage as a result of the progress of civilization

3 Hobbes established the contract in order to escape out of the intolerable condition of the state of nature Locke used the contract as a means to get rid of the few inconveniences of the state of nature but Rousseau utilised the idea of contract with a view to removing the inequality and injustice that came in the wake of civilized life

4 Hobbes established both state and government by one single contract, Locke introduced two contracts—the social contract followed by governmental or political contract, the former creating the state, the latter a particular government Closely following Locke, Rousseau also established the state by means of a single contract Government, according to Rousseau, was created subsequently by legislative enactment of the general will

5 From the above, it is apparent that Hobbes failed to distinguish between state and government while Locke and Rousseau made a clear-cut distinction between the two, the government being only an agent of the state

6 According to Hobbes, the contract was uni-lateral, the king not being a party to the contract The king was rather a product of the contract To Locke, the contract, at least the second contract, was a bi-lateral one—the parties being the king on the one hand and the people on the other According to Rousseau, the contract was made by men among themselves, the king having no place in it

7 According to Hobbes, the surrender of rights by men was complete, unconditional and irrevocable People surrendered all rights including the right to revolt According to Locke, people surrendered some of their rights only to protect

other rights So the surrender was partial, conditional and revocable The right to revolt was retained by the people According to Rousseau, people surrendered their rights not to any king but to the general will.

8 According to Hobbes, the king not being a party to the contract can do no wrong to his people who can have no grievance against the king As the people unconditionally surrender all rights to the king, they have therefore no legal right to revolt against the king A revolution directed against monarchy established by the original contract means breach of contract which implies dissolution of the state and government So monarchy once established cannot be dissolved

According to Locke the contract being a bi-lateral and conditional one, the king is a party to it and as such bound by its terms Any breach of the terms of the contract on the part of the king leaves the people free to change the government according to their will To Locke therefore the right to revolt is a legal right

To Rousseau, government is neither a party to the contract nor the possessor of any original power He attributed sovereignty to the general will which can change the government at will.

9 In the hands of Hobbes, the contract was a surrender of rights to one or to an assembly on the part of the many and thus it became an instrument of slavery In the hands of Locke, the contract was a partial surrender only to protect other important rights In the hands of Rousseau, the surrender of rights was to the whole community and as such each individual got back what he surrendered to the community as its integral part

10 The Social Contract theory was used by Hobbes in support of Stuart despotism in England

Locke utilised the theory in justification of the English Revolution of 1688.

Rousseau's theory became the source of inspiration to the revolutionaries in France

11 Hobbes recognised the legal sovereign but ignored the political sovereign.



Locke recognised the political sovereign but reduced the legal sovereign to a subordinate position

Rousseau recognised only the popular sovereign

12 Hobbes stands for absolute authority of the state which destroys liberty, Locke stands for the absolute freedom of the individual which annihilates government but Rousseau makes an attempt to reconcile the authority of the state with the liberty of the individual

### *Decline of the Social Contract Theory*

The social contract theory has lost much of its sacrosanct character now-a-days and as an explanation of the origin of the state, it has been entirely discarded. The main causes which contributed to the decline of the theory are three in number

The social contract theory was essentially the outcome of men's speculation about the origin of the state and not based on any historical fact or datum. But when the historical method of study which is based on conclusions drawn from the facts of history and observation came to be applied to the study of Political theories, the conclusions of social contract theory arrived at by speculative method was found to be inadequate and unsatisfactory. Secondly, the Darwinian theory of biological evolution also weakened to a great extent the very basis of the social contract theory. The theory of evolution was applied as in all other sciences to Political science as a result of which the state came to be regarded more as a product of historical evolution spread over long years rather than as an artificial creation of man by means of a mutual contract. Lastly, the Social Contract theory was superseded by the theory of popular sovereignty. The latter directly and emphatically proclaimed the ultimate sovereignty of the people which the social contract only indirectly and feebly sought to express

### **The Theory of Force.**

According to this theory, the foundation of the state was laid by the over-powering of the weak by the strong. Before the emergence of the state, there was perpetual warfare. The will of the victor was imposed on the vanquished and thus

the subjugation of the weak by the strong led to the creation of the state. The state is, therefore, the outcome of aggression. The advocates of the force theory also hold that the state is maintained by force. It is pointed out that law and order cannot be maintained without the application of force.

The Force theory was used by the Church Fathers in the Middle Ages to discredit the authority of the state on the ground that the state is based upon might and not upon right. The individualists also made use of the theory in their plea for unrestricted competition in trade and commerce. Herbert Spencer justified his doctrine of the "Survival of the Fittest" on the basis of this theory. The Socialistic writers also hold that the state is the product of aggression—it is, in the last analysis, based on the ruthless exploitation of the working class by the capitalists. The Capitalist class maintains their supremacy by the application of political power. The state therefore originated in force and continues in force. The leaders of the socialistic thought predicted that the state was bound to 'wither away' when the working classes would rise in a body and revolt against the state. The theory of militarism was developed by a school of German writers who made use of this theory to train the people in the ideas of world conquest.

Force, no doubt, played an important part in the origin and evolution of the state, but it would be going too far to suggest that force was the sole factor in state-building. Might may be the basis of right but right, as Rousseau points out, that is based on might, lasts only so long as might lasts. England in 1688, France during the Revolution and Russia in 1917, give a lie direct to the theory of force. The doctrine, either nakedly exposed or decently clothed by different schools of writers, was the more misleading because of the partial truth it contains. True it is that no state can exist without an overruling force which differentiates the state from all other associations. But it is not brute force but the force of public opinion which is universally accepted and recognised as a foundation for all social activities. Force is a necessity to the state in order to secure obedience to its laws but the obedience is based on the common will and not

on the coercive power of the state as such. It is the community which assigns power to the state in order that it may discharge its great function, namely, establishing order in society in accordance with the common will. Prof Laski remarks, "Successfully to coerce, it must be able successfully to persuade. It wins his (individual's) allegiance not by being the state, but because of what, as the state, it is seeking to do."

"Government" says Woodrow Wilson, "in its last analysis, is organized force." The theory of Force points out that coercive power of the state is necessary to maintain peace, unity and tranquillity within the state and also to protect the state from foreign aggression. Force has always played its part in the evolution of the state. "Some of the greatest empires of today have been established through 'blood and iron' and it is not altogether impossible that we shall see more of blood and iron methods in future." But force, it should be remembered, is a criterion and not the essence of the state. The importance of force is always to be adjudged by its value to society rather than by its value to the ruler.

**The Patriarchal Theory.** The theory ascribes the origin of the state to the family which is marked by the common subordination of other members to the eldest male member of the family. It is the bond of kinship that unites together a group of men under the same organization. The family is regarded as the first step towards the formation of the state in which the eldest male member was like a king. The families expanded into clans. Several clans united together to form a tribe. The state is the outcome of the union of a number of such tribes.

Sir Henry Maine was the leading exponent of this theory. But subsequent historical researches have proved that patriarchal family system prevailed in some places in early times but it was certainly not universal. Among certain primitive races, descent is still traced through the mother and not through the father. Besides, it has also been established that certain races move in large number in pack or in horde and not in family.

**The Matriarchal Theory.** Other writers like McLenan have found proof of the existence of matriarchal family where the eldest female member was the head of the family. At first promiscuity prevailed and kinship was traced through the mother. Jenk, another upholder of the theory, holds the view that the process of development of society has been just the opposite of what Maine suggested it to be. According to him, the oldest social unit was the tribe. In course of time, it broke up into clans, clans in their turn separated into households and finally, the households were dissolved "leaving the individual members to constitute the units of society."

None of these theories can be accepted as true because each of them lacks historical evidence of its being universally prevalent. Kinship was no doubt an important factor in giving rise to the state but no complete social organization can be attributed to one single factor.

**The Historical or the Evolutionary Theory.** Having discussed the various theories about the origin of the state, we have come to the conclusion that the origin of the state cannot be traced to a single factor or to a definite period when mankind for the first time organized themselves into a state. The historical theory regards the state as the product of historical evolution and not the creation all on a sudden in accordance with a definite and pre-conceived plan. In the words of Leacock, the state is "a growth, an evolution, the result of a gradual process running throughout all the known history of man and receding into remote and unknown past."

The forces that are responsible in bringing the state into existence are too subtle and complex to be definitely analysed. Nevertheless, we can mark out certain stages in the evolution of the state and certain forces that were at work in creating the state. Man is by nature a social animal. The instinct for obedience is implanted by nature in the human heart. The pattern of the state was first set up by the family. While *kinship* helped to strengthen the solidarity of the ancient groups of men, the part played by religion in building up the state can hardly be minimised. Primitive religion was based primarily on man's awe and reverence for the for-

ces of nature. Some clever persons declared themselves to be not only in the know of these secret forces of nature but also to be in possession of the power to propitiate her. These persons, supposed to be vested with supernatural powers, came to be regarded as high priests of the community as they claimed descent from God. Thus when religion came to be organized as a regular institution, the heads of religious institutions came to be known as the Pope, the Phaiou or the Khalifa. The early kings were invariably priest kings.

*Force* was also a factor in the evolution of the state. The primitive tribes lived in constant fear of one another because war was chronic with them. The actual conquest of one tribe by another or even the fear of conquest often led to the fusion of several tribes into one. But the most important factor in the development of the state was the gradual awakening of *political consciousness* in the minds of the more intelligent persons who convinced others of the utility of such organizations. At the outset, the organization was simple in character but with the progress of civilization, it has become more and more complex. We do not know the beginning of the state nor do we know its end. The process of formation, however, has not yet reached its final stage. To the above mentioned factors, *viz*, *kinship*, *religion*, *force* and *political consciousness*, may be added new forces that are at work in giving a new shape and a new meaning to the state. The *principle of nationality* is a new force in the organization of modern states. The old concept of empire is being gradually replaced by the rise of the nation-states organized on the principle of 'One nation, one state'. The sovereign character of the state has also been largely modified by the *ideal of internationalism*,—that what touches all should be the concern of all. Alongside of these developments, *economic causes* have also contributed to the evolution of the state. The doctrine of the economic equality and equalisation of opportunities for all has given a distinct socialistic turn to almost all the modern states.

The historical or evolutionary theory, therefore, contains the true elements in all other theories. The state gradually grew up and was never manufactured. We may conclude

with Burgess that the state "is the gradual and continuous development of human society, out of a grossly imperfect beginning through crude but improving forms of manifestation towards a perfect and universal organisation of mankind"

But the historical theory gives us an idea only about the process of development of the state but it is silent on the beginning and end of the state.

### **Nature of the State :**

**The Organic or Organismic Theory.** The organic theory seeks to explain the nature of the state. It is an attempt to define the relationship that exists between the state and the individual. The theory regards the state as a living organized unity and not a lifeless instrument. The advocates of the theory draw a parallelism between the body politic and the body natural. According to this theory, the state is like an organism or a living person whose different parts are mutually interdependent.

*History*—The organic theory is one of the oldest theories of the state. Both Plato and Aristotle suggested the similarity between the state and human organism. During the Middle Ages, the theory was developed by St. Thomas Aquinas, Marsiglio of Padua and William of Ockham. The theory received a special prominence in the hands of those writers who wanted to discredit the theory of the contractual origin of the state. The biological theory assumed a new form in the hands of the nineteenth century writers. Writers of the old school simply compared the state with an animal body or plant body but the new school sought to establish the identity of the two on the basis of a minute and elaborate analysis of the affinities which exist between the two. One of the leading exponents of this school was the German writer Bluntschli who went so far as to impute a masculine personality to the state, as opposed to the Church which was its female counterpart. Eminent writers like Hobbes, Rousseau, Paul Lilienfeld, August Comte and others also contributed to the development of the theory. The English philosopher Herbert Spencer in his famous book "Man versus the State"

developed the theory in its present form by making an elaborate comparison between the state and an organism

*Points of Similarity*—As an animal organism is made up of cells, so the state is composed of individuals. Like an organism, the state is composed of parts which contribute to the life of the whole. Just as the different parts of an organism (*a*) are mutually interdependent and (*b*) dependent on the whole, so the individuals in a state are mutually interdependent and like the cells of an organism, dependent on the whole. *Secondly*, there is a close resemblance between the state and a biological organism in respect of their origin, structure and function. Both begin in germs and gradually become more and more complex. Herbert Spencer drew a number of structural analogies between the state and the living organism. A living organism possesses a 'sustaining system,' a 'distributing system,' and a 'regulative system' corresponding respectively to the methods of production, the means of transportation and a seat of government in society. An individual cell of an organism may die with little effect on its life, similarly, the death of an individual in society cannot break the continuity of the state. *Lastly*, both the state and a biological organism are subject to decay. As in an organism decaying parts are replaced by new growths, so in a state, the old, the infirm and the diseased are replaced by new-born babies.

*Criticism*—The organic theory eris by going to the length of identifying the state with an organism. It is true that in some respects, the state is similar to an organism but it should be borne in mind that analogy is not proof. The likeness that exists between the two is superficial, more apparent than real. *Firstly*, the parts of an organism have no independent life or will of their own. They depend entirely for their existence upon the organism. But individuals in a society are independent and it is even possible for them to live apart from the state. *Secondly*, Spencer himself pointed out an important difference between the two. The body natural is concrete, its parts are united together in close contact, while the body politic is discrete; its parts are widely dispersed. *Thirdly*, consciousness is concentrated in a particular

part in the human body, but it is diffused throughout the state. *Fourthly*, an organism is born of a pre-existing one but the state is not born of any pre-existing state. *Fifthly*, the development of an organism is effected through the process of internal adaptation while the state expands through an external process of addition of new territories. *Sixthly*, an organism dies a natural death, while the state is a permanent association, it never dies. *Lastly*, the theory is dangerous in two ways. Either it sacrifices the individual to the state by emphasising his subordination to the state or it weakens the foundation of the government by laying undue stress on the independence of the individual in the state.

*Evaluation*—In spite of the fanciful, absurd and to some extent mischievous character of the analogies, the theory is not without its merits. The theory served a very useful purpose by pointing out that the state is not a mechanical unity but an intimate relation exists between the state and the individual and between individuals themselves. It also helped to refute the mechanical theory of the state which regards the state as a mere artificial mechanism, the parts of which may be collected and put together according to the whims of the mechanic. It teaches that civilized life is impossible in isolation and apart from society. In its practical side, the theory was used both by the Individualists and the Socialists in justification of their respective doctrines of state functions.

**The Idealistic Theory.** The theory is otherwise known as the metaphysical or the absolute theory. The state, according to this theory, is a super-person. It is mystical in form and its personality is something quite distinct from the people who compose it. It is omnipotent, omniscient and at the same time infallible because the authority of the state is divine in essence. The theory advocates that it is the sacred duty of the citizens to render obedience to the authority of the state even if the commands of the state are unjust and repressive in character. "The state," according to the advocates of the theory, "is an entity over and apart from the people who compose it, with a real will and personality of its own."



The Idealistic theory appeared for the first time in the writings of Plato and Aristotle who based their theory on the doctrine of self-sufficiency of the state. But the theory received a special prominence and a new interpretation in the hands of the German Idealistic School led by Kant, Hegel and Fichte, followed by Nietzsche, Tütschke and Bernhardt. Hegel outstripped the earlier writers in upholding the omniscience of the state. According to Hegel, the state has a transcendent personality and a real will. The rights of individuals cannot exist in opposition to those of the state. The state is the only source of individual rights and as such his rights can, under no circumstances, come in conflict with those of the state.

The state represents social morality but itself is not limited by any moral law in its actions. The General will is infallibly right because it represents what is best in individual wills. Thus the theory glorifies the state as an all-embracing organization and regards it as an end in itself.

The theory reached its climax in the hands of the three followers of Hegel, all of whom discovered 'nobility' in war and inculcated a doctrine that a state with a superior civilization has a right as well as a duty to impose its civilization upon those which are less civilized. German Idealistic political philosophy may therefore be held at least partially responsible for the aggressive nationalism of Germany. The theory was accepted in a modified form by the Oxford School of writers, like Green, Bradley and Bosanquet who, however, admitted some limits of state power both from within and without.

The Idealistic theory has been criticised for its support of state-paternalism. The state is neither omnipotent in its relation to individuals nor in relation to other states. *Secondly*, the God-state theory has long been discarded as palpably ridiculous. *Thirdly*, it has been pointed out by the writers of the 'Realistic School' that the super-personality attributed to the state is only a device to suppress the individual and to avoid international obligations. In its practical aspect, the theory leads to the dangerous consequence of completely sacrificing the individual before the altar of the state.

But the theory contains important elements of truth. The theory points out that the state is the highest form of human organization and it is in the state that the individuals enjoy liberty and their relation with others is adjusted. The state can therefore justly claim the allegiance of its citizens and demand utmost sacrifice from them, if necessary. Again, the Idealistic theory describes the state as it ought to be and holds before us the picture of an ideal state, though the picture is a bit over-coloured.

## SUMMARY

### *The origin of the State*

We cannot definitely ascertain the circumstances under which the state made its appearance for the first time. The growing political consciousness of man coupled with the instinct for social life gradually gave rise to the state. There are five theories regarding the origin of the state.

(i) *The Divine Right theory*—The theory ascribes the origin of the state to divine revelation. Kings act as the agents of God, answerable only to Him. The theory held the field for a long time and was used as a defence for royal absolutism. It taught men the virtue of obedience to established authority.

(ii) *The Social Contract theory*—According to this theory, men originally lived in a state of nature. When life in the state of nature became unbearable, men came out of the state of nature to form a Civil Society by their joint agreement. The theory thus attributes the origin of the state to a formal contract by which men escaped out of the state of nature and formed a political society in order that they might lead a more peaceful life. Hobbes, Locke and Rousseau were the principal exponents of this theory. Although they agree in fundamentals, they differ much in details with regard to their views on the state of nature, contract and the civil society that was formed by the contract.

The theory has been criticised as unhistorical, illogical and dangerous. The state according to this theory, is represented as an artificial organization, deliberately created by man. But the state is more than a mere partnership. The element of truth in the theory is that the foundation of the state lies in the consent and co-operation of the people and not on force.

(iii) *The Theory of Force*—The theory attributes the origin of the state to physical force. It supports the principle 'Might

is right' According to this theory, the state was created by the subjugation of the weak by the strong and the state also continues in force

The theory errs by laying too much stress on one factor, viz., brute force. A state based solely on might cannot last long. But it is true in the sense that law and order cannot be maintained without some amount of force which must be based on the common will.

(iv) *The Patriarchal and Matriarchal theories*—Both the theories regard the state as an expansion of the family. The origin of the state, according to these theories, is to be traced to the family where authority belongs either to the eldest male member or to the eldest female member according as the organization of the family

The truth is that kinship no doubt helped to strengthen the bonds of union among ancient groups of men, but there is no historical proof to establish that the state developed through an expansion of families, patriarchal or matriarchal.

(v) *The Historical or the Evolutionary theory*—This is regarded as the most scientific explanation of the origin of the state. It looks upon the state as the outcome of historical evolution. The theory does not seek to ascribe the origin of the state to one particular factor rather it ascribes the origin to various forces, like kinship, religion, force, political consciousness, etc. The theory embodies the elements of truth in all other theories. Forces like the principle of nationality, internationalism and economic equality have also moulded the character of the modern state.

### *The Nature of the State*

(a) *The Organic theory*—The theory looks upon the state as a biological organism. Many well-known writers including Plato, Bluntschli, Rousseau and Herbert Spencer drew analogies between the state and the human body. There are no doubt points of similarity between the two but there are differences as well and the differences are more marked than similarities. The theory seeks to uphold the despotism of the state but the theory served a very useful purpose by emphasizing the fundamental unity of the state.

(b) *The Idealistic theory*—The theory attributes a moral personality to the state. According to this theory, the state is a super-personal entity, mystical in form and unlimited in power. The theory idealises the state and inculcates a doctrine of complete subordination of the individual to the state. The theory has been rejected on the ground that it supports state-paternalism and thereby breeds absolutism.

## QUESTIONS

1. How far is it true to say that the origin of the state lies in force?

2. "As an explanation of the origin of the state, the theory of Social Contract is now entirely discredited" Do you agree with this view? Give reasons for your answer

(C U. 1934, Gauhati, 1957)

3. Mention some of the salient points of difference and agreement between the Social Contract theories of Hobbes, Locke and Rousseau

(C U Hon 1929)

4. "Rightly understood all the best elements in the several theories of the state—the Divine Right theory, the Force theory and the Contract theory—enter into the evolutionary theory of the State" Discuss

(C U Hon 1922)

5. What is meant by the organic theory of the state? Discuss the practical value of the theory

(C U 1932, 1949, Hon)

6. Discuss the practical importance of the Social Contract theory in actual political development

(C U 1949)

7. "The state is an entity over and apart from the people who compose it, with a real will and personality of its own" Examine critically the theory of the state embodied in the statement quoted above

(Pat 1941)

8. "Government rests on force" "Government rests on opinion" Discuss these statements.

(C U 1948)

9. Discuss the importance of the Theory of Social Contract in the development of Democracy

(C U Hon 1952)

10. "Rousseau tries to combine the theories of Hobbes and Locke" Elucidate

(C. U 1951)

11. "The accepted theory of the origin of the state in modern Political Science is the historical or evolutionary theory" Discuss

(C U 1952)

12. State the points of agreement and difference between Hobbes and Locke as expounders of the Social Contract Theory

(C U 1957)

13. Discuss the Theory of Social Contract as an explanation of the origin of the state

Is there anything of permanent value in this theory?

(C U Hon 1958)

14. Discuss the points of agreement and difference between Hobbes and Rousseau as expounders of the Social Contract Theory

(C U 1959)

## CHAPTER V /

### SOVEREIGNTY

#### *References.*

Garner—Political Science and Government, Chs 8, 9.

Gilchrist—Principles of Political Science. Ch. 5

MacIver—The Modern State (1926), pp 467-479.

Laski—Grammar of Politics, Ch 2

„ —The Problem of Sovereignty, Ch I

Coker—The Attack upon State Sovereignty in Merriam, Baines and others.

Bryce—The Nature of Sovereignty in Studies in Jurisprudence and History, Vol II

**Its meaning.** The word *Sovereignty* is derived from the Latin word *Superannus* meaning supreme. It means supreme power of the state. It is a power which is not subject to any other power and does not admit any other power to compete with it. "It is that characteristic of the state in virtue of which it cannot be legally bound except by its own will or limited by any other than itself." Sovereignty, it should be remembered, is an essential mark of the state and not of the government. The absence of this characteristic reduces a state to the position of a mere dependency. An analysis of the different contexts with which the term is used will help to explain its nature.

#### *KINDS OF SOVEREIGNTY*

(a) **Internal and External Sovereignty.** The internal sovereignty of a state refers to the power of the state over all individuals or groups of individuals within its own territorial limits. Thus internal sovereignty implies the idea that the state is the final authority to command and exact obedience to its will. According to Laski, it is by virtue of this power that "what it proposes is right by the mere announcement of intention." External sovereignty, on the other hand, means the power of the state to determine its own policy in relation to other states and the right to declare war and make peace. But a close analysis shows that the distinction between the two is unnecessary inasmuch as the very idea of sovereignty

is associated with the idea of supremacy of the state not only as against all persons and associations within the country but also against all foreign wills. What external sovereignty really means is not that a state is sovereign in respect to certain matters outside its own territorial limits but that it is free from foreign control. In this sense, external sovereignty means nothing more or less than 'independence'. A state is sovereign internally in the sense that it possesses theoretically unlimited power over all individuals, but in that sense, the state cannot be externally sovereign because statehood implies independence of all states from foreign control.

(b) **Titular and Actual Sovereignty.** Titular Sovereignty refers to that authority of the state which does not actually exercise any power but occupies a highly privileged position in the state. It is sovereignty by name only and reminiscent of the days when kings exercised absolute and unlimited powers without any reference to the will of those whom they governed. The King in England is the titular sovereign who reigns but does not govern. He is only the figure-head of the machinery of government. The actual sovereign is the British Parliament which actually rules the country without any reference to the will of the titular sovereign, namely, the King.

(c) **De facto and de jure Sovereignty.** The authority which is recognised by law as the sovereign is the *de jure* sovereignty. The *de facto* sovereign is the person or body of persons who can make his or its will prevail in a community whether with the law or against the law. The *de facto* sovereign may not have any legal claim to obedience, but he is a practical sovereign whose authority is based on physical force or moral persuasion. A military conqueror by capturing the whole or a part of a state's territory and compelling the people to obey him may be established as a *de facto* sovereign. In course of time, the *de facto* sovereign, by securing the consent of the people, may become a *de jure* sovereign. Thus when a *de facto* sovereign, be he a conqueror or an usurper, succeeds in exacting willing obedience to him, other states will recognize his sovereign character. The best example of *de facto* sovereignty, in modern times, is furnished by the case of Spain.

under General Franco who captured the authority of the State by defeating the Republican Government of Spain. General Franco began to rule by force but gradually he is trying to be a *de jure* sovereign by winning the consent of the people. The *de facto* nature of sovereignty may be converted into *de jure* by an election by the people. Thus *de facto* sovereignty and *de jure* sovereignty are only two different aspects of one indivisible authority.

(a) **Legal and Political Sovereignty.** The law-making authority in a state is said to be the legal sovereign. It is that authority which is recognized by the law-courts as sovereign and whose commands are enforced by the executive officers in a state. The legal sovereignty thus gives us the lawyer's view of the sovereignty of the state. (Dr Garner describes it as, "the determinate authority which is able to express in a legal formula the highest command of the state, the power which can override the prescription of the divine law, the principles of morality and the mandates of public opinion.") Austin developed the theory of legal sovereignty of the state in a masterly fashion. He recognized the supremacy of the legal sovereign. When a law has been duly passed, it is to be enforced by the executive officials without any reference to the will of the authority from whom the legal sovereign may derive its power. In every state there must be a legal sovereign, be he an absolute monarch or an elected parliament. Thus the legal sovereign is always a determinate and ascertainable body whose will, expressed in the form of laws, binds everybody in the state and breach of which entails corporal punishment. The legal sovereign is the source of all rights and by its very nature it is not limited by any other will excepting its own. In England, the King-in-Parliament is the law-making body, and therefore, the legal sovereign.]

Political Sovereignty is said to reside in the general body of the Electorate in a modern democracy. It implies the power which lies behind the legal sovereign and whose will ultimately prevails in a state. But the political sovereign cannot formulate its will in the form of laws and the law-courts are not bound to recognize them as laws. In short, the political sovereign in a state is the will of the people and

though the legal sovereign has unlimited power, it cannot ignore the will of the people. In England, the King-in-Parliament is the legal sovereign and the Electorate is the political sovereign from which the legal sovereign derives its power. The political sovereign exerts its influence through the press, the platform and through its right to franchise. A law passed by the legal sovereign may be unjust or oppressive, but the law must be enforced in spite of the opposition of the political sovereign. The legal sovereign must be obeyed so long as it is not overthrown either by constitutional means or by a revolution. But it should be noted here that while the legal sovereign in every state is definite and precise, the political sovereign is vague and indeterminate.

The distinction between legal sovereignty and political sovereignty carries with it the idea of a division of sovereignty. Legal and Political sovereign authorities do not imply a division of sovereignty but what they really mean is that they are two different manifestations of the one and same authority acting through different bodies. In formulating laws, the legal sovereign is to reckon with the opinion of the political sovereign and the political sovereign cannot make its will prevail except through the legal.

**The theory of Popular Sovereignty.** The theory ascribes the ultimate power of the state to the people. But Popular sovereignty is to be distinguished from Political sovereignty which proclaims the power of the Electorate. The theory of Popular sovereignty, as advocated by the earlier writers, identified it with direct democracy, a form of government which was managed directly by the people.

The anti-monarchical writers including Marsiglio, William of Ockham, Althusius and others used the theory in order to discredit the authority of the ruler. But the theory received a definite shape and a new meaning in the hands of Rousseau who made it the 'basis and watchword of democracy'. Rousseau emphatically asserts that sovereignty belongs to the people and that the general will of the people is the supreme power in a state and therefore it constitutes sovereign authority. The theory of Popular sovereignty is based on the famous dictum *Vox populi vox dei*—the voice of the people is



the voice of God. The theory of Popular sovereignty exerted a tremendous influence upon the minds of the people at the time of the American and the French Revolutions. In recent times, Prof. Ritchie has laid great stress upon the doctrine. Prof. Ritchie asserts that the people exercise sovereignty both directly and indirectly, directly through their right to vote and indirectly through the press, platform and lastly through threat of rebellion. In some states, the sovereignty of the people is exercised through devices like the referendum, the initiative and the recall.

*Criticism*—The theory of Popular sovereignty has been criticised on the ground that superior physical power is not possessed by the people. A well-disciplined army can keep down the masses in subordination. Besides, the people to whom sovereignty is ascribed, are so unorganised that they are incapable of clearly expressing their will. Even the most clear expression of the will of the people will have no legal validity unless it is expressed in legal form through constitutional channels. Can the supreme power of the state be exercised by the people including minors, idiots, lunatics, insolvents and criminals? It should be borne in mind that the state is not a mere aggregate of human beings settled down in a particular territory but it is a people, as Woodrow Wilson states, organised for law within a definite territory. Furthermore, it is far from truth to say that the exercise of franchise is a criterion of Popular sovereignty. Only a small per cent of the total population of a state are electors and even these electors do as they are directed by their leaders. Supreme power therefore belongs not to the voters but to the heads of organization.

Sovereignty of the people, on close analysis, corresponds approximately to the force of public opinion. The theory duly emphasizes the fact that public opinion is a force to reckon with in every state and that it cannot be easily flouted. An organized public opinion is an effective check on the sovereign authority because of its power to bring about a revolution. From the lawyer's point of view, the theory may be regarded as superfluous, but in reality "Sovereign power comes in the last resort from the people, and that whoever

exercises it in a state exercises it by "delegation from the people" From the legal point of view, the people may not be the possessor of sovereignty but they in their collective capacity constitute an effective check on the legal sovereign. It is therefore imperative on the part of every government to conduct its affairs not in opposition to, but in accordance with, the public opinion of the country.

**Attributes of Sovereignty.** The characteristics of sovereignty are said to be permanence, inalienability, all-comprehensiveness, absolutism, indivisibility and imprescriptibility.

(a) *Permanence*—It implies that sovereignty exists so long as the state exists. A change of government does not bring about an end of sovereignty. Sovereignty is the life-force in the body of a state and therefore no state can exist without sovereignty and no sovereignty without the state.

(b) *Inalienability*—This means that the state cannot part with its sovereignty. When it alienates its sovereign power, it ceases to be a state. But this does not mean that a state cannot cede a part of its territory to another state or that it cannot delegate some of its powers to different bodies. The truth is that "sovereignty can no more be alienated than a tree can alienate its right to sprout or a man can transfer his life or personality without self-destruction."

(c) *All-Comprehensiveness*—It means that all individuals and every kind of association within the state are subject to the authority of the state. The state may, of course, waive its authority over some voluntarily. The extra-territorial privileges enjoyed by foreign diplomatic agents in a state may be curtailed or even denied to them by the state to which they are accredited.

(d) *Absoluteness or Illmutability*—This characteristic implies the absence of any restraint, internal or external, on its authority. It is often pointed out that a state is limited both by constitutional law and international law. But these are self-imposed checks and may be set aside whenever it likes. The power of the sovereign is legally unlimited.

(e) *Indivisibility*—Sovereignty is a unit and therefore

cannot be divided and shared by more than one authority in the state. Powers may be delegated to different organs but sovereignty, being a single absolute power, cannot be divided in any way. The principle holds good even in the case of a federal state where also sovereignty resides in the nation as a whole. It is not sovereignty but powers and functions of the government are divided and distributed by the federal constitution between two sets of government—national and local.

(f) *Imprescriptibility*—This implies that sovereignty is neither lost nor destroyed by mere lapse of time. A people may not have exercised sovereignty for sometime on account of subjugation by an alien people but non-exercise of sovereign power does not put an end to sovereignty.

X **Austin's theory of Sovereignty.** The leading exponent of the theory of legal sovereignty is John Austin who published his book on Jurisprudence in 1832. The Austinian theory of sovereignty is intimately connected with his general theory of Law. Closely following Bentham, he stated his views on sovereignty thus, "If a determinate human superior, not in the habit of obedience to a like superior receive habitual obedience from the bulk of a given society, that determinate superior is the sovereign in that society and that society including the superior is a society political and independent"

Austin begins his theory with an emphasis on the necessity of a sovereign authority which is essential to the existence of a political community. In fact a political community is unthinkable without this sovereign power.

Analysing his definition, the following conclusions as to the nature of sovereignty can be drawn.

*Firstly*, sovereignty must reside in a 'determinate' person or a 'determinate' body. Therefore neither the general will as enunciated by Rousseau nor all the people taken together can be sovereign. *Secondly*, the power of the determinate superior is unlimited or absolute. He can exact obedience from others but he never renders obedience to any. *Thirdly*, this obedience in the Austinian sense has a positive and a negative side. The test of sovereignty, according to Austin, is therefore that people must habitually obey the commands of the determinate superior. Obedience rendered by a people

to an authority occasionally will not constitute that authority into sovereign power. What Austin drives at is that obedience rendered to sovereign authority must be voluntary and as such undisturbed and uninterrupted. Thus the presence of the Russian army in Germany, today, even though the foreign military power receives temporarily the obedience from the bulk of the community, does not suffice to make the invading power sovereign in the political society. Austin also points out that it is not necessary that all the inhabitants should render obedience to the superior. It is enough if the 'bulk', i.e., the majority of a society render habitual obedience to the determinate superior. *Fourthly*, sovereignty is one indivisible whole and as such incapable of division. It cannot be divided between two or more parties because there can be only one sovereign authority in a state. *Fifthly*, Austin is strongly of opinion that command is the essence of law. In whatever form law is couched, it has no other source excepting the will of the determinate human superior and that breach of the command entails punishment.

Anticipating his critics, Austin himself admits that it is very difficult to ascertain what constitutes the 'bulk' of any given society or how long the obedience must be rendered in order to call it 'habitual'. He also admits that there is, in actual practice, hardly any nation which does not at times render some obedience to another. But the most essential characteristic of sovereignty, according to Austin, is its definiteness—that it must be readily ascertainable. It must be located in a definite person or group of persons who are singled out either by personal or by class characteristics.

Thus the sovereign in the English nation is regarded by Austin to be "the King, peers and commons" whom he would regard as a determinate body inasmuch as this body receives obedience but is not in the habit of obeying another like determinate body and is therefore sovereign. In the U.S.A., the sovereignty, according to Austin, rests with the state governments "as forming one aggregate body". By government, he, of course, means 'the body of citizens' which elects the ordinary legislature. Such bodies as these, Austin regards as determinate and as capable of corporate conduct and therefore 'fitting repositories of supreme power'.



The Neo-Austinian writers have, however, modified the Austinian theory of sovereignty in response to the above criticisms. They point out that the theory is mainly a theory of legal sovereignty—a theory that suits the purpose of the lawyer. A lawyer is concerned only with the law, he need not go beyond the legal sovereign whose commands are supreme in a state. But in spite of these defects, Austin's definition of sovereignty is clear and precise. He has done a distinct service by clearly distinguishing the legal from the political sovereign. He clarifies the idea of sovereignty and thus dispels the mist that came to hang round the theory of sovereignty. His chief error lies in the fact that he unduly emphasizes the importance of the legal sovereign and ignores the forces and influences which lie behind the legal sovereign. Austin's theory may therefore be said to be an incomplete theory of sovereignty but not an incorrect one.

It should however be pointed out here that the Austinian theory of sovereignty has been misinterpreted and misunderstood by many of his critics including Green, Maine, Laski and MacIver. According to these critics, Austin advocated a theory of sovereignty which was based on the idea of force, having no reference to the will of the people. In fact, one critic has gone so far as to suggest that the conception of sovereignty as developed by Austin is "far more applicable to a slave plantation or to a menagerie than to the actuality of political life." But this is a gross mis-statement of facts. These critics attribute to Austin a view which was not actually held by him. A careful study of his views as discussed in Lecture VI of his 'Jurisprudence' will bring out the truth. Austin did not stop simply with the analysis of the juristic conception of sovereignty, but he dived deep, as an utilitarian jurist, to discover the forces and influences which lie back of formal law. Having analysed the cause of habitual obedience which he attributes to the preference for any government by the bulk of the community to anarchy, Austin unequivocally declares that since "a government continues through the obedience of the people, and since the obedience of the people is voluntary or free, every government continues through the *consent* of the people or the bulk of the political society. . .

and that, if the bulk of the community ceased to obey it habitually the government would cease to exist”

The above statement clearly proves that the usual criticism which is levelled against Austinian theory is wholly unwarranted except in some other respects. (“Austin and the Basis of Obedience to Law” by Prof D N. Banerjee, *Calcutta Review*, August, 1942)

**The Theory of Limited Sovereignty.** The Monistic and the Idealistic schools of writers advocated a theory of absolute sovereignty of the state. The Monists assert that the power of the state is legally unlimited and that the state can enforce its laws on the citizens against their will. The Idealistic school also advocated a theory of state absolutism. They regard the state as an end in itself and as such the sovereignty of the state is not limited in any way. But the absolutism of the state has been challenged by many writers who want to limit the power of the state. They speak of two kinds of limitations: one of a non-legal nature, such as prescriptions of divine law, law of nature, etc., the other of a legal nature, such as constitutional law, international law, etc. Bluntschli asserted that “Even the state as a whole is not almighty, for it is limited externally by the rights of other states and internally by its own nature and by the rights of its individual members”

So far as the first kind of limitations is concerned, it has been argued that they are not limitations at all. No state is legally bound to act in accordance with the dictates of humanity and reason. A law which has been passed by the law-making authority of a state will be enforced by the law-courts even if it be unjust or contrary to the principles of morality. In the same way, constitutional laws do not provide any limitation to the exercise of sovereign authority. Constitutional laws regulate the activities of a government by defining its sphere and thus act as a check on the authority of the government. But the sovereign power always reserves the right to amend the constitution. It has been stated by other writers that international law constitutes an effective check on the authority of the state. International law no doubt regulates to a certain extent the conduct of civilized states in

their mutual intercourse with one another. But in the absence of a superior authority to enforce them, these laws are not legally binding upon states. A state is free to repudiate a treaty or violate a law of nations. It is to be considered as a law only in so far as and only so long as a state chooses to abide by it. The check of international law rests more on expediency than on its legal validity. This is the reason why international law is honoured more in the breach than in the observance. Thus international law is no more than a self-imposed check on the sovereignty of the state. The Pluralists have also sought to limit the power of the state by the autonomy of the groups and the existence of law. The Pluralists argue that the state is only one of the many associations to which the individuals happen to belong. Every association has its own laws for the guidance of its members and there is no earthly reason why the laws of the state should have priority of claims over those of other associations. Jurists like Krabbe and Duguit point out that laws exist even before the birth of the state and the state therefore cannot claim exclusive control over them.

The above analysis points out the absolute character of the sovereignty of the state. The limitations mentioned above have no legally binding character except in so far as the state chooses to recognise them. But in actual practice, the state very seldom acts in a way which is likely to disregard public opinion. Similarly, in the domain of international politics, the freedom of action of a state is limited by the universally recognised principles of international responsibility. According to Chief Justice Marshall, it is the consideration of common benefit and gain that makes it necessary for every state to relax its absolute and complete jurisdiction which sovereignty is said to confer. The state is therefore theoretically absolute and legally, the sovereignty of the state is unlimited though certain restrictions are imposed on the powers of the government for achieving the ends of the state. Thus when we speak of limited sovereignty, we mean physical limitations and not legal limitations. Sovereignty is no doubt defined as a power both unlimited and irresponsible but in practice it is neither.



**The Theory of Divided Sovereignty and Federalism.** The existence of a number of part-sovereign states like protectorates, condominium and mandated territories led some writers to think that sovereignty of the state could be divided and partitioned. The question of a Dual Sovereignty of the state assumed greater importance in practical politics with the formation of composite states, in the form of Personal Union, Real Union, Confederation and Federation. The advocates of the theory of Dual Sovereignty point out that in a Federation sovereignty is divided between the government at the centre and the governments of the component states. They argue that each of the national and local governments is supreme within its own sphere as defined by the constitution of the union.

*Criticism* The advocates of the theory of Dual Sovereignty err on account of their failure to distinguish between state and government. It is the state which is sovereign and not the government. Government is the machinery which exercises the powers of the state. What is divided in a federal state is not sovereignty but only the powers and functions of the government. There is no partition of sovereignty in a federal state rather there is a division and distribution of governmental powers between the two sets of government by the sovereignty itself. Dr Garner objects to the theory of Dual Sovereignty and quotes Jellinek in support of his view: "The theory of divided sovereignty in a federal state rests upon a confusion of sovereignty with political power. What is divided is neither sovereignty nor state power but rather the objects upon which their activity is exercised." Sovereignty is a unit. Division means its destruction.

**Recent changes in the conception of Sovereignty:** The **Pluralistic conception of Sovereignty.** The traditional theory of sovereignty which is otherwise known as the monistic theory attributes absolute and unlimited power to the state. It regards the state as the source of all powers—legal and political and seeks to make the individual and groups of individuals forming different associations completely subordinate to the state. The state, according to the monists, is supreme not only within but also without. Its will is not limited by any other will save its own. This traditional

theory of sovereignty has been assailed in recent times by a group of writers known as the Pluralists. The Pluralistic theory of sovereignty came by way of protest against the undue exaltation of the power of the state advocated by the earlier school of writers known as the Monists. As a result of the teaching of the Monistic school, the state came to grow into a veritable 'Leviathan,' clothed with an unlimited power. Puffed up with the infallible and mystic character imputed to it by the Idealistic school, the state gradually extended its long arm over every sphere of human life with the result that the personality of the individuals and of other associations was completely crushed under the mighty weight of the 'Leviathan.' The Pluralists opposed this tendency of heightening the pretensions of the state to an inordinate pitch. The Pluralistic theory received a great stimulus from the writings of the German jurist, Otto Gierke, and in England, the theory has been very ably upheld by writers like Figgis, Maitland, Lindsay, Barker, Laski and MacIver. In its practical aspect the theory was considerably influenced by the formation of powerful economic organizations which came in the wake of the Industrial Revolution and which also claimed autonomy in their own spheres in order to safeguard their group interests. The state was now faced with the problem of adjusting its relations with these groups. The position of the state in the face of so many associations in society has been very aptly expressed by Barker thus, "No longer we write Man *vs* the State, we write Group *vs* the State."

(The Pluralists argue that society is essentially federal in nature and the state is only one of the many associations to which the individual happens to belong. Man's social nature finds expression through various associations pursuing various ends and that is the reason why the social man has built up numerous associations, economic, political, religious, professional, etc. These associations, the Pluralists point out, have grown out of the needs of time and as such they are purposive associations each one of them having a mission to fulfil. Each association has its own laws and can exact obedience to the same independently of the state. Thus the state has now become more an association of individuals, already united in

various groups for promoting various interests of their members and less an association of isolated individuals. The state, therefore, has no business to encroach upon the proper sphere of their activities

Power of every association, MacIver points out, should be relative to, and commensurate with, its function. If the functions of the state are clearly scrutinized, it will be evident that the state cannot regulate all the aspects of a man's life. It regulates only one part, namely, the outstanding external conduct of a man's life. The state cannot do what the family or the university does to the promotion of the interests of the individual. Besides, a man is not merely a citizen: he has his duty to his family, to the community and to himself. The state, as an association, has therefore a limited function, no matter how great that be. But it exercises an unlimited power which far transcends the limits of its function. The function of the state, the Pluralists argue, does not justify its being entrusted with so formidable a power, viz., power of life and death over all associations no less than over persons. The state which is vested with a function of a limited nature, must not be clothed with an unlimited power. Thus the Pluralists want to take away from the state the absolute sovereignty which it enjoys according to the Monists. They want to drag down the state from its position of pre-eminence and to place it on a footing of equality with other associations like the university, the church, the trade union, etc. Sovereignty, according to them, is no longer indivisible and all-comprehensive but all associations are equally sovereign within their respective sphere. The state cannot claim allegiance from them by virtue of mere force or by its right to make war and peace.

The Pluralists go further to suggest that the state is also not absolute in relation to other states. They argue that International law is no longer considered as self-imposed by mutual agreement but it has its necessary sanctions behind it in the form of International rules, treaties and conventions. The absolutism of the state in international affairs is fraught with dangerous consequences. It will leave Italy free to attack Abyssinia and Germany, Poland. State-sovereignty is

therefore limited externally by the rules of International law. Thus it is aptly said that the Internationalists will shackle the 'Leviathan' in chains and the Pluralists will perform necessary operations in its interior.

Jurists like Krabbe, Duguit and others have totally denied sovereignty to the state by placing law above the state. According to them, laws are not made by the state, they grow spontaneously and are obeyed by men out of a sense of advantages and benefits which obedience to law confers on men. They are enforced not by the physical force applied by the state but by the force of public opinion. Hence critics like Laski assert that it would be of lasting benefit to political science if the whole concept of sovereignty were surrendered.

*Criticism* The Pluralists therefore want to re-write the theory of sovereignty, ascribing it to different groups within the society. But the Monists ask a pertinent question—who will adjust the relation between these autonomous groups? In the absence of the sovereign state, there will be no authority to adjudicate upon the disputes between different groups and our society will be reduced to the state of semi-anarchy. The Monists rightly point out that there must always be some ultimate authority in every society, otherwise the complex social structure is sure to collapse. The Pluralists meet this point by giving the reply that in case of disputes, the state will act as an impartial umpire in bringing about a compromise between warring groups. It will play the role of a co-ordinating authority among various conflicting claims. The Monists reply that to give the state the power of co-ordination and reconciliation is almost tantamount to clothing it with sovereignty. Thus, "While most Pluralists have sought to drive sovereignty out of the front door of their new society, they quietly smuggle it again throughout the back door, more or less disguised, but nevertheless a sovereignty." Thus the pluralistic idea of divesting the state of its sovereign character is not only impossible but it is not one to be desired in practice. To make the state equal in status with other associations is to deny the state its sovereignty, but without sovereignty the state ceases to be a state with no power to supervise and control the activities of other associations.

*Evaluation* We cannot therefore accept the theory of the Pluralists *in toto*. The Pluralists have, however, done a distinct service by rightly emphasizing the importance of the various social groups. The various associations in a society serve useful purposes and they should be given the largest amount of autonomy within their own sphere. It would be wrong on the part of the state to exercise a paternal control over them. The Monistic view-point therefore remains almost intact with this modification that the state is *supreme* though not *absolute* in relation to other social groups.

In its external aspect, however, the theory of the absolute state has been discarded. International law is coming more and more to impose legal limitations upon the authority of the state and not merely self-imposed restrictions. Garner says that "the absolute sovereignty of the state in its International relations is not only a legal fiction but a baneful and dangerous dogma which ought to be abandoned and that the notion should be expunged from the literature of International law." The truth is that the doctrine of state absolutism was born in an historical environment in which necessity of restoring order clothed the state with internal sovereignty while the economic self-sufficiency of the age made it independent of other states. But now that the idea of the state as a power-system has been replaced by that of the state as a welfare system and the age of self-sufficient states by that of states mutually inter-dependent, a re-orientation of the classical theory is necessary to fit in with the actualities of life.

**Location of Sovereignty.** It is very difficult to say where sovereignty resides. Different writers hold different views with regard to the seat of sovereign power. The different views may be summarised as follows—*Firstly*, there are writers who ascribe sovereignty to the people. We have already seen that the people are incapable of wielding this power (see the Theory of Popular Sovereignty). The theory of popular sovereignty therefore falls to the ground.

*Secondly*, there is the view that sovereign authority resides in the body which can create and amend or modify the constitution of a state. In England, the King-in-Parliament is the sovereign body because it can pass both ordinary and consti-

tutional laws. In France, revision of the constitution must be approved by 2/3rds majority of the National Assembly, or 3/5ths majority of both the chambers, and are to be submitted to a referendum. In the U.S.A., neither the Federal Legislature, i.e., the Congress nor the State Legislatures can amend the constitution. They can pass certain laws relating to their respective spheres. The body that is competent to amend the constitution is a complex and cumbrous one. Article 5 of the U.S.A. constitution prescribes four different methods of amending the constitution. *First*, the Congress by a two-thirds majority may propose an amendment which requires for its validity ratification by legislatures of three-fourths of the states. *Secondly*, an amendment may be proposed by a convention called at the request of legislatures of two-thirds of the states and the legislatures of the three-fourths of the states may ratify it. *Thirdly*, the Congress may propose an amendment by a two-thirds majority of its members and conventions in three-fourths of the states may ratify it.

*Lastly*, a convention called at the request of the legislatures of two-thirds of the states may propose an amendment which must be ratified by conventions in three-fourths of the states. Objections have been raised against the location of sovereignty in a federal state in the constitution-making body. These constitution-making bodies are only temporary, they are created whenever necessary. But one of the essential attributes of sovereignty is permanence and continuity. Moreover, some of these constitution-making organs are merely parts of the governmental machinery and hence cannot be vested with sovereign power. So Laski rightly remarks that the task of locating sovereignty in a federal state is an 'impossible adventure'.

There is another theory advocated by Gettel which attempts to locate sovereignty in the sum-total of the law-making bodies within the state. These bodies are (i) Legislatures, national, provincial and local, (ii) Courts which interpret and apply laws to particular cases, and supplement existing laws, (iii) Executive officials who make laws by issuing ordinances and proclamations and (iv) The Electorate which exercises the power of referendum, initiative and plebiscite.

But the above theory is fallacious inasmuch as almost all the law-making bodies, mentioned above, are parts of the government and as such derive their power from the state which alone is sovereign.

### History of the Theory of Sovereignty.

Sovereignty is an essential mark of the state and with every change in the conception of the state, the concept of sovereignty has also varied from age to age. The concept of sovereignty with all its modern implications was unknown to the ancient political philosophers although the Greek Philosopher Aristotle spoke a lot about the 'Supreme power' of the state. The Roman jurists were also familiar with the notion as is evident from their writings. During the Middle Ages, the idea of sovereignty was associated either with the authority of the King or with the theocratic control of the Pope. Feudalism no doubt helped to bring the territorial state into existence, but this simply created strong monarchies which became the repository of supreme power. Thus a theory of sovereignty was formulated in order to lend support to the absolute rulers who wanted to consolidate their authority after the decline of the power of the papacy.

The first writer to make a systematic treatment of the theory of sovereignty was Jean Bodin, a French jurist, who published his famous book *Republic* in 1576. According to Bodin, sovereignty is the supreme power over citizens and subjects, untrammelled by the laws. It must not only be supreme but also perpetual. The chief characteristic function of sovereignty is the making of laws. The sovereign, like the subjects, is bound by the law of God and of Nature, but his obligation in this respect is to God, by whom it will be enforced. Thus Bodin made sovereign authority supreme, though not absolute.

Among other writers who made notable contributions to the doctrine of sovereignty, mention may be made of the Dutch jurist Hugo Grotius, Hobbes, Locke, Rousseau, Bentham, Austin and the whole of the Pluralistic school. Grotius also developed a theory of state sovereignty both in its internal and external aspects. But he laid great stress on the

external aspect of sovereignty, emphasising the equality and independence of states which later on served as the basis of international law. Hobbes, like Bodin, attributed unlimited sovereignty to the ruler, basing his theory on a social contract without any provision for guarantee of individual liberty. Both Bodin and Hobbes made the same mistake in so far as they attributed sovereignty to the government, identifying it with the state

The first writer to impose any constitutional limitations on the absolute character of sovereignty was the English writer Locke. He restated the theory in order to bring it in harmony with the representative form of government that was fast developing in his country. Locke avoided the word sovereignty in his two treatises and located the inevitable supreme power of the state in the people who vest limited sovereignty to the government

Rousseau did for the people what Hobbes had done for his ruler. He attributed unlimited sovereignty to the people who could only exercise it directly in a mass meeting. He reduced government to the position of an executive agent of the general will, denying the government any share in the exercise of sovereignty. Thus both Locke and Rousseau clearly distinguished between state and government, attributing sovereignty to the state alone. Bentham, an analytical jurist, reverts back to the assumption of governmental sovereignty but he accepts the view that sovereignty, though legally unlimited, is not morally so. Sovereignty is limited by the right of resistance when resistance is morally justifiable. Although he pinned his faith for social improvement solely in the activity of the state, he recognised the fact that such activity of the state is to be adjudged by the calculus of the greatest happiness of the greatest number

Austin closely following Bentham develops a theory of legal absolutism of sovereignty, attributing it to the supreme government

The Idealistic school in Germany led by Kant, Hegel and others also developed a theory of absolute sovereignty of the state with the addition of a mystic super-personality to the



state with the result that the state grew into a veritable 'Leviathan'. It ignored not only the personality of its own citizens but also invaded the rights of other states.

A new theory of sovereignty known as the Pluralistic theory came into the field as a protest against the omnipotent state. The Pluralists recognise the sovereignty of the different groups within society but deny to the state a monopoly of the attribute. They also seek to reject the notion of external sovereignty of the state. They point out that sovereignty is no longer to be considered as an essential attribute of the state because the modern state is a social service organisation which has no necessity of being vested with the power of life and death over other associations no less than over persons. Prof. Ritchie lays stress on the ultimate sovereignty of the people inasmuch as it is the people who can make and unmake the government. The modern tendency therefore is to reduce the sovereignty of the state to a position in which it becomes harmless internally as well as externally. The recognition of individual liberty and the growth of the ideal of internationalism have led to a decline of the sovereign state. Men have realised that the nation-state is not the ultimate unit of human organisation and hence not of ultimate human allegiance. Hence a state is conceivable even without its sovereignty.

### SUMMARY

I Sovereignty is an essential characteristic of the state and not of the government. It means supremacy.

II *Kinds of Sovereignty* (a) *Internal and External* Internal sovereignty means the supremacy of the state within and external sovereignty means freedom from foreign control.

(b) *Titular and Actual* The nominal head of the state is known as the titular sovereign as the king in England. The actual sovereign is that person or body of persons who actually exercise the sovereign power as the British Parliament.

(c) *De facto and De jure Sovereignty* The former refers to "that person or body of persons who can make his or their will prevail whether with the law or against the law". *De jure*, on the other hand, has a legal status but he may not be the *de facto* sovereign. Similarly, the *de facto* may not be the *de jure* sovereign.

(d) *Legal and Political Sovereignty* Legal sovereignty resides in the supreme law-making authority whose commands the courts recognise as laws and apply to particular cases. Political sovereignty means the power that lies behind the legal sovereign. The legal sovereign derives its power from, and is responsible to, the political sovereign,—the Electorate.

III *The theory of Popular Sovereignty* It means the power of the people to regulate the affairs of the state. But in practical politics, Popular sovereignty has come to mean the administration of a country by the representatives of the people in consultation with the opinion of the general public. But the authority of the people must be exercised through legal channels, e.g., through Electorate.

IV *Attributes of Sovereignty* They are, (a) permanence, (b) inalienability, (c) all-comprehensiveness, (d) absolutism, (e) indivisibility, and (f) imprescriptibility.

V. *The Austinian theory of Sovereignty* proclaims the supremacy of the legal sovereign—the body that makes law in a state. But it ignores the political aspect of sovereignty. His definition of law also excludes customary law. Austin's theory may suit the purpose of the lawyer, but it is on the whole an incomplete theory of sovereignty.

VI *The theory of Limited Sovereignty* The sovereignty of the state is unlimited in the sense that its authority cannot be questioned by any body. It can do whatever it likes. But some writers point out that public opinion, moral rules, constitutional law, international law, etc., constitute effective check on the sovereign power of the state. But really speaking, these are self-imposed limitations. In actual practice, however, no state will generally disregard the force of public opinion or act contrary to the principles of moral law or international law. These are not to be regarded as legal checks but they are checks so far as and so long as the state chooses to recognise them.

VII *The theory of Divided Sovereignty* Sovereignty is indivisible. The tripartite division of functions into Legislative, Executive and Judicial or the distribution of powers between the central and local governments in a federation, is not a case of divided sovereignty rather a division and distribution of governmental powers by the sovereignty itself.

VIII. *Recent changes in the conception of Sovereignty* The traditional theory of sovereignty has been assailed from three points of view. (a) *Firstly*, the Pluralists have questioned the omniscience of the state in relation to other social groups. According to them, the state is only one of the many associations in society. An individual is a member of many such associa-

tions and the state therefore cannot claim the exclusive allegiance of the individual by virtue of being the state (b) *Secondly*, the state has been denied its absolute character in relation to other states. The limitations of International law are becoming more effective and real on the sovereign character of the state. (c) *Thirdly*, Sovereignty of the state has been challenged on the ground that *laws are anterior to the state* and they exist independently of the state

In spite of these criticisms, the state continues to be the highest form of human organization which supplements and co-ordinates the activities of other associations in society. It also settles the disputes between other associations

IX *Location of Sovereignty* The location of sovereignty in a state is a difficult problem which can be studied from two points of view. Legal sovereignty resides in the body that can amend the constitution and political sovereignty is located in the will of the people. The truth is that sovereignty is an indivisible unit which resides in the state and state alone

X *History of the theory of Sovereignty* The French writer Bodin was the first to make a systematic discussion of the theory, though the concept was not unknown to the earlier writers. Hugo Grotius laid stress on the external aspect of sovereignty. The three Social contract writers Hobbes, Locke and Rousseau also made definite contributions to the development of the theory, the former advocating absolutism of state sovereignty while the latter two using it as an instrument of popular sovereignty. The analytical school of Jurists including Austin used the theory for upholding the legal despotism of the state. The Idealistic school also inculcated a doctrine of absolute sovereignty of the state with a mystic super-personality imputed to the state. The absolute character of state sovereignty has, however, been assailed by a group of writers who want to limit the powers of the state internally by group autonomy and externally by the rules of international law

## QUESTIONS

- ✓ 1 Define exactly what you understand by sovereignty ; how far can sovereignty properly be said to belong to the people? (C U 1946)
- 2 State the Austinian theory of sovereignty and discuss the extent to which the modern Austrians have modified their theory in response to subsequent criticism (C U 1929)
- ✓ 3 Give an account of the Pluralistic attacks on the theory of Sovereignty (Pat. 1942)

Or,

Discuss the recent changes in the conception of Sovereignty  
(C U 1931)

✓ 4 What are the characteristics of Sovereignty? When we speak of 'limited sovereignty', do we understand physical or legal limitations?  
(C U Hon 1928)

✓ 5 Explain clearly the doctrine of Popular Sovereignty. What are its limitations?  
(C U 1947, 1949)

6 Discuss the question of Sovereignty  
(C U 1952)

7 What do you understand by Sovereignty? Discuss the Pluralistic criticism of the classical theory of Sovereignty

*Monistic Theory* (C U 1954)

8 Discuss the nature and purpose of the pluralistic attack upon the traditional doctrine of state sovereignty

*Monistic Theory* (C U. Hon 1955)

9 "The state is limited within, it is also limited without" Examine this statement Discuss in this connection the essential attributes of sovereignty  
(C U 1957)

10 How is *legal Sovereignty* usually distinguished from *political Sovereignty*?

Illustrate your answer  
(C U 1958)

11 Discuss the nature of Sovereignty, and distinguish between (a) Legal and Political Sovereignty and (b) *De Jure* and *De Facto* Sovereignty  
(C U 1960)

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## CHAPTER VI

### LAW

#### References.

Gilchrist—Principles of Political Science Ch 8

W Wilson—The State, Ch. V.

W W. Willoughby—The Fundamental Concepts of Public Law, 1931, Chs. 10, 16.

MacIver—The Modern State, Bk. II, Ch 8

R Pound—Law and Morals.

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**Nature and Definition.** The word *law* is derived from an old Teutonic root *lag*, meaning something which remains fixed. In English, the word means that which is uniform. The word *law* is used in various senses in modern times. Thus we speak of natural laws, moral laws, social laws. A natural law is one which denotes a sequence of cause and effect. The laws of Chemistry, for example, relate to the action and reaction of chemical agents. *Secondly*, a law may refer to rules regulating human conduct and be applied to two spheres of action. If the rules refer to motives and internal acts of the will, they are called moral laws; if, on the other hand, they are concerned with external conduct, they are called social or political laws. Political science deals only with political laws.

A political law has been defined from different points of view by different schools of writers. Austin, the leader of the *Analytical School* of Jurists, defines law as a command of the sovereign. Whatever may be the form in which a law may be expressed, it is, according to Austin, in the last analysis, reducible to commands issued by the Political superior to the Political inferior. Command is the basis of law. The essence of law is therefore that it is consciously made and that an enforcing authority is the criterion of law. But Austinian definition of law has been criticised by Sir Henry Maine, the leader of the *Historical School*, on the ground that it excludes all those cases of customary laws which are not issued in the form of command rather they represent dictates of customary

procedure. Nevertheless, they are enforced by law-courts and obeyed by the people. Thus the Analytical School of Jurists opines that law is static and not evolutionary and has therefore no other source than the sovereign authority, namely the law-making organ of the state. The *Historical School* asserts that law is the product of progressive social forces like custom, legislation, judicial decisions and that all laws are not issued in the form of command. To meet the criticism of the Historical School, the *Neo-Austinians* have modified their definition of law. Dr. Woodrow Wilson defines law in a manner so as to reconcile the views of the Analytical School with the criticisms offered by the Historical School. "Law," according to Woodrow Wilson, "is that portion of the established thought and habit which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of government"

The best definition of law has been given by Prof Holland—"A law is a general rule of external action enforced by a sovereign political authority." Thus the Neo-Austinians have conceded to this extent that a law is a rule of external conduct *enforced* rather than *imposed* by a sovereign authority. The view of the *Sociological School* is that law is based on the common consent of the community. A law which fails to secure popular support, is sure to be ineffective and inoperative. Common consent of the people is therefore the only source of law—be it the product of custom or legislation or judicial decision.

Thus these three different views lay emphasis on three different aspects of law but it must not be supposed that they are mutually exclusive, rather they are complementary to one another. The truth is that laws in the fundamental sense are the rules of conduct which derive their formal sanction from the sovereign authority but their actual content is determined both by progressive social forces and also by the sense of right, not of an individual, but of the majority of the community in the state. The latest writers on law have given a wider conception of law. They assert that law is the very antithesis of command. It applies to all. It binds the legislator as well as the subjects. The obligations involved in law

are based not exclusively on organized force, but on the individual consciousness of social approval or disapproval of any individual action. Thus laws are rules of conduct which demand conformity and are supported by the compulsion of the state. But it does not follow that conformity to political laws is solely due to compulsion but it is due to the consciousness of benefits which such conformity confers. Laws are obeyed because they are destined to promote social good irrespective of the source from which they come. To whatever factor this obedience to state law might be attributed, the fact remains that state laws are compulsory and it is in this that they differ from laws formulated by other authorities. But the compulsion of law is a necessity of its existence in order to preserve and promote the benefits of social life. "Without this element of compulsion" says a great authority, "there is no guarantee of the generality which we have seen to be inherent in law. Because it is general in its application, the law of the state must be compulsive, because it is external in its injunctions, the law of the state can be compulsive." It should however be remembered that the state simply sustains law but the state itself is sustained by the community. Therefore both the state and law are means to promote the common interests of society.

**Contents of Law.** Now it might be asked if laws are backed by the common consent of the people, what is the necessity of the coercive power of the state? The answer is that as perfect generality is the essence of law, it must apply to every body at all times. It is necessary that all people must obey laws always. A law is no law which can be violated with impunity. Woodrow Wilson thus states, "Law is both a minor of conception and an active force. It exercises both an ethical and a physical compulsion." Every law is an embodiment of the prevailing social sense of justice and injustice or right and wrong. The character of a community can be judged with reference to the laws passed by it. Thus law is, on the one hand, an index to social progress or set-back and on the other, an active force which compels men to conform to a particular course of outward conduct. Every law involves an 'ought' and a 'must'. There are people who obey laws because they

consider it their moral duty. To them, law exercises an ethical compulsion. But there are other people who obey laws not because of the fact that laws are just but because of the fear of punishment involved in every breach of law. To this group, law exercises a physical compulsion and involves a 'must'. The moral support behind every law is to be sought in public opinion while the organized force of the government acts as a physical compulsion when the moral force fails.

**Essentials of Law.** The above analysis gives us an idea about the essence of law. Law is, according to Woodrow Wilson, "the will of the state concerning the civic conduct of those under its authority". Three things are therefore necessary for the existence of law. *Firstly*, there must be a civic community capable of exercising a will of its own. *Secondly*, there must be certain recognised rules of conduct regulating their mutual intercourse with one another. The first thing necessary for a numerous body of men for living together in a community is a body of definite rules of conduct, all of which may not be written down. *Thirdly*, there must be a sovereign power to enforce obedience to these rules. As the laws safeguard the rights of the people by compelling them to behave in a particular way, the state is vested with the power of punishing those who violate the rules of conduct.

**Relation between Law and Ethics.** Political laws and moral laws, though they touch at many points, present striking contrasts in their essential character. The province of political law is confined to outward actions of men, while the sphere of morality extends to motives as well as actions. "Ethics is concerned with the whole life of the man, his thought and motive as well as his actions while political law is concerned with the regulation of external relationships of mankind". The province of law is therefore much more limited than that of morality. *Secondly*, they differ with regard to their sanction. Breach of moral law is not punished by the state but condemned by the conscience of man as well as by public opinion. Violation of political law is punished by the action of the state. Thus while the fear of punishment acts as a deterrent to the breach of political law, qualms of one's conscience as well as social condemnation constitutes a



check upon immoral acts. *Thurdly*, political laws are more precise and definite as there is a regular organ in every state for the formulation of laws. Ethical laws lack this precision and definiteness because there is no authority to make and enforce moral laws. *Fourthly*, Ethics prescribes absolute standards of right and wrong, justice and injustice; Law, on the other hand, follows standard of policy pursued by the state at a particular time. Thus there are acts which are immoral, though not necessarily illegal. Again, Law prohibits many things that are not morally wrong. They are wrong or illegal because forbidden by the state (*Mala prohibita*). Falsehood and ingratitude are immoral but not illegal. They fall within the sphere of morality. The Indian Legislature has prohibited the marriage of girls below the age of fourteen and of boys below eighteen. Such marriages are illegal not because they are immoral but because they have been declared as illegal by the government. *Fifthly*, political law is universal in character and application while moral law is individual and as such appeals differently to different persons. The sense of right or wrong and justice or injustice is not the same rather it differs from individual to individual. But perfect generality is the essence of political laws. Furthermore, the safety of the state may sometimes make it necessary to adopt certain measures contrary to the principles of morality. It is argued that "the safety of the state is its first law, and to realise this end it must be above morality." The state is justified in maintaining its independence and integrity by any means however repugnant it might appear from the ethical point of view. This is the view upheld by a school of philosophers who seek to justify all acts of the state irrespective of their nature and contents. But the view cannot be accepted unconditionally. True it is that the principle of self-preservation is as much a necessity with the state as is with the individual and equally true it is that the existence of the state is a condition necessary to the fullest development of the individuals composing the state. But on that account it must not be supposed that the state is free to enact any measure it likes. The state, being a means and not an end in itself, can act immorally only when such immoral acts are introduced as temporary measures for the preservation and promotion

of that condition in society which makes the realisation of good life possible. Without this condition, the state will grow autocratic and autocracy seeks to perpetuate itself by means of repressive laws enacted not so much for social good as for its own safety. So the moral irresponsibility of the state is only conditional and not absolute. The truth is that law is based on expediency and considerations of public safety and therefore acts which are immoral are not necessarily illegal only for reasons of public interest.

In spite of these differences, there are close connections between the two. The Ancients, however, believed that political laws and moral laws are inseparable. With the progress of political society, a clear-cut division has been made between the two, but still morality cannot be entirely divorced from politics. The ultimate end of the state is the promotion of general welfare and the moral perfection of men in society. It is the duty of the state to formulate such laws which will elevate the moral standard of the people and remove those that hinder the realisation of the moral ideal. The laws of a country must conform to the prevailing standard of morality. Only such laws as are supported by the moral sentiment of the people are respected and obeyed by the people. Moreover, the principles of law and of morality are complementary to each other. If a law is far in advance of the prevalent moral opinion of the people, it has very little chance of being obeyed. There are certain universal moral codes to which every government must give legal sanction. The laws prohibiting murder, arson, robbery, etc., are cases in point. These acts are immoral as well as illegal. Gilchrist states the relation between law and morality thus: "The state, however, has a direct function in relation to morality. The function is both positive and negative. As a positive moral agent, the state makes good laws, that is, laws which are in accord with the best moral interests of the people. Negatively the state must remove bad laws." Thus the government of India is making effort positively and negatively to elevate the moral standard of the people. Positively, the government is enacting good laws such as introduction of prohibition, various kinds of factory laws and tenancy laws, negatively, it is

removing bad laws and social customs and institutions like child marriage restraint act, removal of untouchability, abolition of the zemindary system, etc.

**Sources of Law.** The development of the legal system in its present form has been influenced by various factors. These factors have been described as the various sources of law. Holland enumerates six such sources, viz, customs, religion, adjudication or judicial decision, scientific discussion, equity and legislation

(a) *Customs*—Customs are the earliest source of law and have played an important part in the growth of law in every country. Certain common rules of conduct observed by the members of a community crystallised into customs. When the state came into existence, it recognised some of these customs and in this way customary rules based on common consent acquired the status of law. The best example of customary law is furnished by the 'common law' in England.

(b) *Religion*—Customary laws prevailing in primitive societies were mixed up with religious practices. These laws were more scrupulously obeyed by the people because breach of these laws was regarded as a sin and considered as detrimental to the spiritual interest of man. The Hindu and the Muhammadan laws in India derive their origin from religious practices.

(c) *Adjudication*—It refers to decisions made by courts of law. The function of the judge is to apply a particular law to a particular case and in applying the law, he interprets it in his own way. The new interpretation put upon the existing law often modifies the legal system of a country. Sometimes judges have to try cases not covered by any existing law. The findings in a particular case are followed by other judges in trying similar cases. Thus the judiciary as the interpreter of law is also a maker of law.

(d) *Scientific discussion*—The views of great Commentators like Manu, the Roman Jurisconsults, Blackstone, Story, Kent and others have influenced the actual legal systems in their respective countries. Commentators gather past customs, decisions and laws and arrange them in a logical form.

In this way, they are able to arrive at new principles which, in their turn, serve as the basis of new laws according to the needs of the time. Commentators thus contribute to the development of law by interpreting the existing law, removing ambiguity and deducing principles applicable to specific cases.

(e) *Equity*—It is also a kind of judge-made law. It is made when the judges decide cases in accordance with the principles of justice and good conscience. Thus equity is made not in the process of interpretation of the existing law but in the act of applying the principles of fairness and equality to the cases of persons whom the existing law would provide no relief. Thus adjudication is an interpretation of the existing laws while equity is an addition to it. The best example of equity is furnished by the decisions of the Roman Praetor or of the English Lord Chancellor who used to decide cases according to this principle. The decisions were intended for giving relief where existing law provided none.

(f) *Legislation*—The last, though not the least important source of law is Legislation. With the spread of democratic ideas, the collective will of the people is expressed through the Legislature in the form of laws. As it is the declared will of the sovereign, legislation is regarded as the principal source of law in the modern world. Although the influence of other sources is definitely on the wane in modern times, the Legislatures, in formulating laws, cannot altogether ignore the customs, religious practices and equity prevalent in a country. Customs, religious opinion, equity etc., in order that they may be enforced by courts of law, must have to be recognised by the legal sovereign. Woodrow Wilson states, "All means of formulating law tend to be swallowed up in the one great deep, and broadening sense, Legislation."

Oppenheim, in his famous book on *International Law* asserts that there are not many sources of law but there is only one source of law, viz., common consent of the community. According to him, custom, religion, adjudication, equity, etc., are not, strictly speaking, so many sources of law. Every law is based on the common consent of the people and this common consent is expressed in different forms through different channels known variously as custom, religion, scientific com-

mentaries, etc. They merely mark the different stages in the evolution of law which is nothing but the expression of the sovereign will

**Classification of Law.** For purposes of political science, law may be classified in two different ways ; *firstly*, according to the agency through which it is formulated and *secondly*, according to the public or private character of persons concerned. According to the authority through which laws are formulated, we may classify them as follows —

(a) *Statutes*—They are laws formally enacted by the Legislature in a state. These form the bulk of the existing laws in every country.

(b) *Ordinances*—These are commands or orders issued by the Executive for administrative purposes. They are generally temporary in character and of limited application.

(c) *Common Law*—It is a body of legal principles which have their origin in customs but are recognised and enforced by law-courts as statute law.

(d) *Constitutional Law*—These consist of “those fundamental principle that create government, outline the scope of its power and prescribe the method of their exercise” It is only in countries having a rigid constitution that the distinction between statute law and constitutional law is observed

(e) *International Law*—It is a body of rules that regulate the activities of civilized states in their mutual intercourse with one another

*Secondly*, according to the character of the persons concerned. Holland classifies law into two broad types, *viz.*, (1) *Municipal* and (2) *International Law*. Municipal laws are those laws which apply within the territorial limits of a state and are enforced by the sovereign authority of the state. Municipal laws of one state do not apply to other states. Municipal law may again be subdivided into (i) *Private Law* and (ii) *Public Law*. Private law regulates the relation of individual and individual. It defines and regulates the rights enjoyed by the citizens against one another. Public law deals with the organization and function of the state and protects the rights which the citizens enjoy as against the state. Thus

public law regulates the relations between the state and individual. Public law may further be classified into (a) *Constitutional Law* which defines the form, organization and the manner of exercising governmental power, (b) *Administrative Law* which prevails on the continent of Europe. It is a separate set of rules which make provisions for the trial of public officials by courts other than the ordinary courts of law. Government officials, for offences committed in their official capacity, are hauled up before these courts known as administrative courts and the laws applied by these courts are known as administrative law. (c) *Criminal Law and Procedure*. Criminal law deals with crime and its punishment by the law-courts in a state. Criminal procedure defines the manner in which punishment is to be awarded.

**International law. Its Definition and Contents.** International law is a body of rules which determine the conduct of civilized states in their mutual dealings with one another. Wheaton a great authority on International law, defines it as "those rules of conduct which reason deduces as consonant to justice from the nature of the society existing among independent nations, with such definitions and modifications as may be established by general consent". These rules concern the dealings of states in peace and war, they determine the rights and duties of neutral states, the modes of acquisition of territories by states and the diplomatic relation of one state with another. They also define the rights of citizens of one state living within the jurisdiction of another state and the control exercised by states over persons and property on sea and land. International law is a product of modern civilization. Growth of international trade and commerce, the improvements and inventions in the domain of science, the rapid development of the means of communication and other like factors have made it possible and necessary for states to come more frequently in contact with one another. Every modern state has a network of relations with other states and is dependent on them. International law is the body of rules which civilized states observe in their dealings with one another.

Prof. Holland has remarked that international law is the vanishing point of jurisprudence. Jurisprudence deals with

the science of the law of the state One of the characteristics of law is that it must be obeyed by all and this obedience to law is enforced by the organised force of the state In other words, the sanction behind law is the might of the state. But in the case of international law there is no super-state which can enforce international law in the same way in which national laws are enforced International law therefore cannot come, strictly speaking, within the scope of the science of jurisprudence

**Its Sources.** The development of International law, like that of Municipal law, has been influenced by various factors. It is the product of a number of treaties and conventions, of international congresses and conferences, of diplomatic correspondence between states and interpretation of great jurists and statesmen These factors, coupled with the Roman *jus gentium* which in its turn was based on the law of nature, gave rise to a unique system of law known as International law

**Is International law properly speaking law ?**

There is a good deal of controversy regarding the exact nature of International law. Can it be properly called law ? According to Austin, law presupposes a determinate authority which will make and enforce law In the case of International law, it does not represent the will of any single supreme authority *Secondly*, it does not impose any obligation on any state to abide by the principles of International law. A law is no law which can be violated with impunity There is invariably a punishment for every breach of Municipal law, but in the case of International law, there is no legal sanction to compel enforcement of its rules. There are also no courts with power to enforce it or impose punishment upon its violators Each state is the ultimate judge in its own case and the ultimate means of settling inter-state dispute is war International law is honoured more in the breach than in the observance, and as such it is lacking in the essential character of law, namely that there is no super-state to enforce it. *Lastly*, there are many Jurists who are of opinion that International law is a body of rules which are as yet *imperfectly* arranged and are *imperfectly* applied to an *imperfectly* organized family of nations On these grounds, it is held

by many writers that International law should better be treated as rules of international morality, imposed by international public opinion.

As against this view, many writers have sought to prove its legal validity. It is true that International law is more often violated than observed, but Municipal laws are also violated. If breach of Municipal law does not make it invalid, then breach of International law should not also make it invalid. *Secondly*, it is law because every state normally observes its provisions. No state has as yet dared openly violate it. When a state is accused of breach of International law, the accused state, just like an accused person, tries to explain its conduct in a way that will exonerate it from the guilt. This proves that International law is respected by all states. *Thirdly*, it is denied the name of law because there is no legal sanction behind it. The ultimate sanction behind all law is not the force of the state but the force of public opinion. In the case of International law also, a world public opinion is fast growing and is acting as a check on the arbitrary exercise of powers by the states. The two leading authorities on International law,—Hall and Oppenheim,—are of opinion that the sanction of International law is a 'broad-based public opinion'. "The true test of law is its general recognition and observance and that a moral sanction is sufficient, the threat of physical force being unnecessary". Again, threats of war, reprisals and cessation of diplomatic relations are the several means of punishing a state in case of violation of International law. In recent times, the Axis partners have been heavily penalised for waging unlawful war against the allied powers. Besides, it should be remembered that International law is a law *between* and not *above* nations. It is a law, though a weak law. When the family of nations will be properly organized, International law will be as binding upon civilized states as is Municipal law upon private citizens of a state. Judged by these tests, the rules of International law may properly be called law.

### **International law—Public and Private.**

The scope of international law has increased so enormously that its subject-matter has been divided into parts, viz., Public International Law and Private International Law. While the



former deals with the mutual relations of states when acting in their own interests, the latter is mainly concerned with the application of appropriate national law for deciding any given issue of private law. The rules relating to peace, war and neutrality constitute the main subject-matter of public International law while Private International law grew out of the commercial relations between the subjects of different states.

### **Obstacles to the Growth of International Law.**

Two great obstacles to the growth of International law are the idea of national sovereignty and the principle of territorial possession of states. The first impeded the growth of International law for a long time in the past by refusing to admit any limitations upon its authority save that which it makes itself. But the growth of democratic ideals and the consciousness of the existence of an international society outside the limits of each state have undermined the notion of national sovereignty. The second obstacle still persists and tends to weaken the effectiveness of International law. But the recognition of the fact that the right of territorial possession of the state is only a right of control necessary for its public service, will go a long way in combating the notion.

What is necessary in removing these hindrances is the creation of an enlightened public opinion on a world basis in order that such opinion might provide the necessary sanction behind International institutions like the League of Nations or the United Nations but also by an international court. The latter in addition to its function of settling disputes must also act as a rallying centre for international public opinion. At any rate, the conviction must be thoroughly instilled into the minds of men that the state which "is the guardian of order within cannot be the enemy of order without." Only then that International law can be effective.

### **Law of Nature.**

It was the Greek Philosophers who first developed the concept of the law of nature. They maintained that the principle of uniformity pervaded the whole universe and this should be the guiding principle to which all human laws should conform. Human laws based on this principle of uniformity were called

'law of nature'. Both Plato and Aristotle believed that the fundamental principles of right and justice are to be found in nature. Aristotle very often referred to natural law and justice in support of many of his political theories.

The stoics interpreted natural law in the sense of law of reason which, according to them, was fixed and immutable. They defined it as the "manifestation of the single and homogeneous spirit of the world." They held that Nature was the embodiment of universal law and reason which interprets Nature is the only source of law. They taught that the general rules of human conduct should be so shaped as to conform to this divine reason which is universal in character.

The legal system of Rome was considerably influenced by the concept of the law of nature. The Romans had their own laws called *jus civili* or civil law which regulated the affairs of the state. But when Rome developed into an empire the necessity to determine the general legal principles which could be applied to the entire empire of Rome was felt. The *jus naturali* of the stoics influenced the formulation of the *jus gentium*, the body of rules to be applied to the non-Romans. *Jus gentium* or the law of nations was in reality the law of nature embodying the universal principle of human conduct applicable to all nations. Christianity also adopted the conception of the law of nature which helped to inculcate the doctrine of freedom of religion and worship.

In the hands of the social contract writers, the concept of the law of nature passed into a state of nature. Hobbes was of opinion that the state of nature was one of mutual strife and warfare. Locke and to a greater extent, Rousseau asserted that man was born free and equal and so in modern society also liberty, equality and fraternity are his birthrights. In the modern age, the influence of the law of nature may be traced in the writings of Duguit, Krabbe and others who hold that law is immaculate and must be based upon reason and justice.

*Criticism*—The theory of natural law has been assailed by its critics on the ground that there is no legal sanction behind this law and hence it cannot be enforced. Moral

sanction on which it is based cannot prescribe any punishment for breach of such law.

*Secondly*, it has been pointed out that natural law came to be interpreted as law of reason which could only be an ideal to which all human laws should conform. The state is a human institution and as such it has its limitations. State laws therefore cannot claim the degree of perfection which is believed to be inherent in natural law.

*Influence of Law of Nature*—The influence of law of nature is discernible even now-a-days in the domain of law and philosophy. The development of International law which was formulated in the seventeenth century was the direct outcome of a belief in natural law. International law, which regulates the conduct of civilised states is associated with the name of the Dutch jurist Hugo Grotius. It is a body of rules which make it incumbent on states to follow these rules under certain circumstances and make it obligatory on the part of the states to follow them on the ground that all states are equally sovereign, and that no state should unnecessarily encroach upon the rights of other, and violate the dominant principle of the law of nature.

*Secondly*, the judges, in trying cases, often apply the principle of equity i.e., principle of justice, equality and good conscience which is the stoic ideal.

*Thirdly*, the system of trial by jury embodies the principle of natural law inasmuch as it is believed that the finding of facts by several persons approaches nearer to truth.

*Lastly*, the remnant of the doctrine of natural law is to be found in the recognition by every government of the rights of life and property which are ensured to every citizen.

*Different Meanings of Natural Law*—*Firstly*, natural law may mean a sequence of cause and effect in natural phenomena. The laws of chemistry, for example, relate to the action and reaction of chemical agents. *Secondly*, it may mean according to Huxley and Spinoza, the instinctive conduct of human beings. *Thirdly*, it may refer to the rules of conduct which are based on divine will. Laws of nature, in reality, are mere ideals to which human conduct is enjoined to conform.

## State and Law.

What is the relation between state and law ? Is the state the parent or child of law ? In one sense, law is the child of the state because all laws either emanate from the state or at least they require recognition by the state for their validity. The state as the agent of the community formulates and enforces laws with a view to creating an atmosphere in society in which every man gets opportunity to develop all that is good in him. Thus laws are instruments of the state by means of which the state guarantees to its citizens a system of rights, the maintenance of which is the only criterion of the state.

But Duguit, Klabbe and others attribute priority and precedence to law by placing it above the state. According to these writers, law is not only anterior to the state but it also exists independently of the state. The state simply recognises and sustains law. They even go to the length of asserting that even the almighty state is bound by law—its very existence and functions are solely determined by constitutional laws. Looked at from this point of view, the state seems to be the child of law.

Those writers who place law above the state in order to over-emphasize its importance fail to distinguish between state and government. Government is merely an agent of the state through which the state acts. As has been pointed out above, the main function of the state is to maintain a system of rights and lest these rights might be encroached upon by over-government, constitutional laws limit the powers of the government by defining its jurisdiction. Special provision is also made for constitutional remedies, if any of these rights is threatened by governmental interference. The state also reserves the right to change or even to abrogate the constitution. So it is not the state but the government which is subordinate to law.

## SUMMARY

1 *Nature and Definition* Law, in political science, means a general rule of external action enforced by a sovereign political authority. The Austinian view of law is untenable inasmuch as

it takes a very narrow view of law. Law is based on the common consent of the community. The modern writers interpret law as so many rules of social conduct which must be observed in order to preserve and promote the benefits of social life.

II. *Contents of Law* Law serves the purpose of a mirror which reflects the popular conception of right and wrong in a particular state. Law is also an active force. It exercises an ethical compulsion in the sense that some men obey law because they consider that it is just and therefore they ought to obey it. Law also exercises a physical compulsion when the moral force fails. There are people who obey law because of the fear of punishment involved in the breach of law.

III. *Essentials of Law* For the existence of law, there must be (a) a sovereign state (b) a body of rules, and (c) an authority to enforce the rules.

IV. *Relation between Law and Morality* (a) Moral rules deal with all the action of man, his motive, thought and external conduct while law regulates only the outward acts of man. (b) Laws are enforced by the state while moral rules cannot be enforced. Their sanction lies in conscience or public opinion. (c) Moral rules follow absolute standard of right and wrong but law follows standards of policy. Thus *Mala prohibita* are acts which are forbidden by law, i.e. they are illegal but not necessarily immoral.

But there is a close connection between Law and Ethics. "Ethics," says Sidgwick, "is connected with Politics so far as well-being of any individual man is bound up with the well-being of his society."

V. *Sources of Law* The sources of law are custom, religion, adjudication, scientific discussion, equity and legislation. The earliest influences in the evolution of law are custom and religion. The most important and the most prolific source of law in modern times is legislation.

VI. *Classification of Law* According to the agency through which law is formulated the divisions of law are Statutes, Ordinances, Common law, Constitutional law, and International law. According to the character of the persons concerned, law may be classified into Municipal law and International law. Municipal law may be divided into Private and Public law. Public law is further subdivided into Constitutional law, Administrative law and Criminal law and Criminal Procedure.

VII. *International Law* The rules that civilized states observe in their dealings with one another are called International law. It regulates the relation of states in peace and war and defines the position of neutral states.

The question is whether International law is law proper or not. There are two sets of opinion on this point. One view is

that it is not law because there is no sovereign power to enforce it. The states decide for themselves whether to obey it or not in a particular case. According to the other view, International law is law because the sanction behind International law is the same as the sanction behind ordinary law, viz, the common will.

VIII *Obstacles to the growth of International Law* The idea of national sovereignty and the principle of territorial possession of states stand in the way of the growth of International law. These impediments may, however, be removed by creating an enlightened opinion on a world basis. International institutions like the U N and international tribunals can help the creation of such public opinion.

IX *Law of Nature* The doctrine of Natural law holds that Nature is the embodiment of universal law and human reason which interprets Nature as the sole source of law. The theory was first worked out by the stoics and later on, the Romans and the Church Fathers developed the doctrine. The Roman *jus gentium* came to be identified with the law of Nature. Modern International law was considerably influenced by the *jus gentium*.

Law of Nature cannot be enforced inasmuch as it has no legal sanction behind it. The development of International law, the system of trial by jury, and the principle of equity which judges apply in trying cases are all the practical effects of a belief in natural law.

X *State and law* The state is regarded as the parent of law because it creates, recognises and enforces law for ensuring better social life. Others maintain that the state is the child of law inasmuch as laws are prior to, and independent of, the state. Even the state is found to act according to constitutional laws. The truth is that it is not the state but the government which is bound by laws.

## QUESTIONS

- 1 Discuss the nature and sources of law (C U 1935)
- 2 What is law? What are its sources? Does "Law exercise both an ethical and a physical compulsion"? (Nag 1934)
- 3 Distinguish between the spheres of Law and Morality and show the relation that exists between them (C U 1932, Hons)
- 4 'A law is a command which obliges a person or persons to a course of conduct.' Comment on the definition considering particularly the cases of (a) customary law, (b) equity, (c) International law (C U 1930)

5 What is International law? How far is it correct to say that during the last few years the concept of International law has received a severe set-back? (Bombay, 1938)

6 "The safety of the state is its first law and to realise this end it must be above morality" Comment (C U 1938)

7 Discuss the nature of law with special reference to its relation to morality (C U 1948 Sup)

8 (a) "International law is only valid for a given state to the degree that it is prepared to accept its substance" (b) "The world has become so interdependent that an unfettered will to any state is fatal to the peace of other States" (Laski) How far do you agree with these two views? (C U 1950, Hons)

9 Discuss the nature and sanction of law. How far is it correct to use such expressions as 'the laws of Nature', 'the laws of morality,' and 'International Law'? (C U 1950)

10 'Law is the expression of the general will of the community' Discuss the statement (C U 1955)

11 Discuss the nature and sanction of Law. Can International Law be regarded as Law in the strict sense of the term? Give reasons for your answer (C U 1958)

12 Discuss the nature of law with special reference to its relation to morality (C U 1959)

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## CHAPTER VII

### CITIZENSHIP

#### References.

- Gainer—Introduction to Political Science, pages 331  
335-51.  
W D. Aston and P Jordan—Citizenship Its Rights  
and Duties (5th Ed 1936)  
S Leacock—Elements of Political Science, 1933, Ch V  
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Citizen.

**Definition and character.** The term *citizen* is used in various senses. Literally, it means the resident of a city who enjoys certain privileges of such residence. Thus we speak of citizens of Calcutta or Bombay, meaning those persons who live there and enjoy the rights which are conferred upon them by their membership of the cities. The Greeks and the Romans lived in tiny states called city-states and an inhabitant of a city who had the leisure and ability to actively participate in the functions of the state was called a Citizen. Women, slaves and some others were not regarded as citizens. To the Greeks, citizenship meant far more than the mere membership of a modern state. Citizenship was a function and almost a profession with the Greeks. But modern states have vast area with an equally vast number of population. The word *citizen* is now used in a wide sense. It includes all those who permanently reside in a country and owe permanent allegiance to the state regardless of their political function. Thus the modern conception of citizenship is more extensive but less intensive. The modern state has no exacting conception of citizenship like the ancient city-state. Mr Justice Miller of the Supreme Court of the U. S. A. says, "Citizens are the members of the political community to which they belong. They are the people who compose the state and who in their associated capacity have established or subjected themselves to the dominion of a government for the protection of their individual as well as their collective rights."



Beneath the literal sense in which the word *citizen* has been defined above, there is a deeper significance associated with it. Modern writers like Laski attribute to it certain qualities which, though not as intensive as the ancient conception, have redeemed the modern citizen from the status of a mere sleeping partner of the state. The citizen in a modern state, according to these writers, is to play his part actively in the life of the community if he seriously deserves the name. His function is to give and take. He must receive all that is necessary to equip himself as a citizen and give back to the community all that promotes common well-being of the community. There is a tendency in modern times to identify citizenship with patriotism. But patriotism is not enough. The citizen must, above all, develop two virtues—virtues of toleration and moderation. Toleration enables the citizen to pay due regard to the opinion of others who do not share his views. It enables him to look upon every question from a disinterested point of view. The loyalty of the citizen to the state should not be allowed to prejudice his attitude towards others. The only thing against which the good citizen should wage a relentless war is injustice and inhumanity. Modern citizenship “is in the nature of a series of concentric circles”. A citizen is a member of the family, a member of the village or town in which he lives, a member of the occupation which gives him bread, a member of the country and above all a member of humanity at large. He must adjust his relation to each of these groups in such a way that his loyalty to one may not come in conflict with that of the other. The rights of a citizen, as has been remarked by an eminent author, seem to be affected by the law of diminishing returns. The emphasis today is more and more on his duties. It is in “the contribution of one’s instructed judgment to the public good” that the essence of citizenship lies.

**Citizen and Subject.** Sometimes a distinction is made between a subject and a citizen. A citizen is defined as one who enjoys full civil and political rights while a subject is one who is not entitled to any political rights. The distinction is not a real one *firstly*, because of the fact that the state is sovereign over all; its control is unlimited over all individuals

\*, regardless of their civil and political status. *Secondly*, the word *subject* has been used in history to describe the relation between the absolute king and those whom he ruled. But in modern democracies, such a relationship hardly exists and therefore the employment of the word *subject* is quite unnecessary. But it should be noted here that in spite of the progress of the democratic ideal, the word is still used in connection with those people who have no independent political status, e.g., the Indians before 1947.

**Citizen and Elector.** A distinction is sometimes made between a citizen and an elector. An elector is a person who has the right to vote. But there may be citizens who are not electors and electors who are not citizens. The son or the wife of a citizen is a citizen but he or she may not be an elector. In the USA, there are many electors in the component states who are not citizens. Citizenship cannot therefore be identified with the right to vote.

**Citizen and Alien.** An alien is a foreigner who temporarily resides in a state of which he is not a member. A citizen of a state is one who resides in the state and is subject to the state in all matters. Both receive the protection of law in respect of their life and property in the state they inhabit. Both must obey the laws and pay rates and taxes. An alien cannot expect protection when he goes outside the state in which he temporarily resides. But the interests of a citizen will be looked after by the state not only at home but even when he is abroad. A citizen is subject to the laws of conscription while an alien cannot be forced to serve in the army. An alien may be expelled from the state for misconduct but a citizen cannot be expelled from his own state. But the most important point of distinction between the two is that aliens do not enjoy the same political privileges as citizens do. Thus a foreigner in England can buy property, can sue and be sued but he cannot exercise franchise either Municipal or Parliamentary, or hold any office or sit as a juror.

**Citizen and National.** Sometimes a distinction is also made between a citizen and a national. A citizen is one who enjoys full civil and political rights but a national is one who is a citizen without full political rights. Thus a national, like

a citizen, owes allegiance to the state, is subject to the control of the state both at home and abroad but has no voting right. Nationals therefore constitute that portion of the citizens of a state on whom the state, for some reasons or other, has not conferred the right to vote. The bulk of the population of a modern state, according to this definition, consists of nationals and not citizens.

**Modes of Acquisition of Citizenship.** There are three principal methods of acquiring citizenship, viz. (a) by birth, (b) by naturalisation, and (c) by the annexation of foreign territory. Those who are born as citizens are called natural citizens and those who acquire citizenship by formal grant of a state are known as naturalized citizens.

There are two principles by which citizenship by birth may be acquired. One is called *Jus Sanguinis* (rule of blood relation), and the other *Jus Soli* or *Jus Locī* (rule of place of birth). According to *Jus Sanguinis*, the citizenship of a child is determined by the citizenship of his father, irrespective of the place of birth. France, Italy and some other states follow this principle. The principle of *Jus Soli* lays down that the citizenship of a child is determined by the place of birth, irrespective of the citizenship of his or her father. The principle of *Jus Soli* is followed by the Argentine Republic. According to this principle, children of citizens born abroad become aliens and children born of alien parents within the territory of the state become citizens. England and the United States, however, follow both the principles. They apply the principle of *Jus Sanguinis* to their own citizens and the *Jus Soli* principle to aliens. Thus citizens born abroad of United States are American citizens *Jus Sanguinis*, while children born in the United States of alien parents are American citizens *Jus Soli*. This difference in the principles governing citizenship sometimes gives rise to cases of double nationality. Thus, if a child is born of French parents in America, he will be claimed both by France and by America. The position of a citizen with double nationality is anomalous and he may be called upon to serve in the army simultaneously by the two states in times of war. In the interest of the citizen concerned it is desirable that his nationality should

be clearly determined. Very often, the citizen is allowed the option of choosing one nationality, renouncing the other when he attains manhood. Such conflicts are also decided by states by refusing to recognise the status of a person as a citizen, so long as he remains abroad.

The second method of acquiring citizenship is by *naturalisation* which, in its broad sense, includes the conferment of citizenship on a foreigner through the processes of *legitimation*, *adoption*, *marriage*, *appointment as a government official*, the *purchase of real estate* or *annexation of foreign territory* and *grant on application*, i.e. naturalisation proper.

Legitimation is a method by which citizenship is conferred on illegitimate children. A woman by marrying a foreigner loses her former citizenship and acquires the citizenship of her husband. The acceptance of service under a foreign government is regarded by some states as the acquisition of new citizenship. Purchase of land in a state often entitles an alien to apply for citizenship.

A distinction must be drawn between *naturalisation* and *denization* which are provided by the English law of naturalisation. A certificate of naturalisation is granted to a foreigner in accordance with the act of Parliament, while denization is conferred by the Crown by letters patent. A denizen cannot enjoy all the political privileges conferred on the naturalised citizen. He cannot be a member of Parliament or take any grant of land from the Crown. A denizen occupies a position intermediate between a natural-born citizen and an alien.

**Conditions for Naturalisation.** An alien is admitted as a citizen in a state on his fulfilling certain conditions, which are, of course, not uniform in all states. The general rule is that an alien must reside in a country for a prescribed period of time and he must be of good moral character. The period of residence is five years both in England and in the U.S.A., but the residential qualification is reduced or not required at all under special circumstances. Working knowledge of the language of the state is sometimes insisted upon.

The effect of naturalisation is that a foreigner is placed on a footing of equality with natural-born citizens. He is

entitled to all the civil and political rights enjoyed by a natural-born citizen. But some states make a distinction between a natural-born and a naturalised citizen. In the United States of America, a naturalised citizen cannot hold the offices of the President and the Vice-President. The U.S.A. Government have also enacted laws to the effect that only 'White persons' and 'persons of African descent' may apply for naturalisation. Thus the law excludes the Indians, the Chinese and other Asiatic races from being naturalised in the USA. The USA Government have, however, in recent years, been persuaded to make some relaxation in favour of Indians seeking to be naturalized there, thanks to the untiring efforts of some of the Indian residents in the USA. As a result of this, a limited number of Indians are being every year formally granted USA citizenship mainly on the basis of long-term residence. Severe restrictions have been imposed on the Indians in the matter of acquiring citizenship by the British Self-governing Dominions. The anti-Indian legislation passed by the Union Government of South Africa is the worst of its type and is wholly unworthy of a civilized government.

**Loss of Citizenship.** Citizenship may be lost in various ways. A woman loses her citizenship by marrying a foreigner. *Secondly*, acceptance of service under a foreign government may lead to the loss of original citizenship. *Thirdly*, desertion from the army of a state may lead to the forfeiture of citizenship. *Fourthly*, a person may lose his original citizenship by long and continued absence from his native state. *Lastly*, a person may voluntarily resign his citizenship of one state and adopt a new one. This is known as *expatriation*.

**Hindrances to Good Citizenship.** Bernard Shaw remarks, "Liberty means responsibility." The imposition of restraint on liberty means the imposition of duties and conscientious discharge of duties constitutes the essence of citizenship. The principal obstacles to the proper discharge of civic duties are (a) indolence, (b) private self-interest, and (c) party-spirit.

(a) *Indolence* is the greatest enemy to the exercise of civic duties. A citizen may lapse into idleness and fail to

discharge his duties in connection with public affairs. He may not exercise his voting right and may not do justice to his duties as a public official. This indolent habit is partly due to the consciousness that he is only one of the many and even if he fails in his duties, there are others who will do the public business. Such indolence should be overcome by every citizen.

(b) The second hindrance to good citizenship is the motive of *self-interest* which is very difficult, on the part of many, to overcome. The private interest of a citizen may at times be at variance with the interests of the community. But if the citizen cannot exercise self-control but seeks to promote his own interest, the interest of the community is sure to suffer. Thus very often, citizens sell their votes to unscrupulous candidates who offer them the highest price for their votes and thus help the corruption and degeneration of public life by the election of unworthy men to responsible offices.

(c) *Party-spirit* also acts as a serious obstacle to the growth of good citizenship. Political parties have come into existence in the wake of democratic governments. But we must not be blind to their evil influences. True it is that democracy depends for its success on well-organised party system but the unhealthy rivalry between different parties tends to vitiate the political atmosphere of the country. People are very often misled by political leaders who do not hesitate to adopt underhand means and to betray the cause of the whole nation with a view to promoting their own interests.

**Remedies.** Modern governments are fast drifting towards democratic forms and democracy, for its success, requires a band of alert, intelligent and public-spirited citizens. But the growth of good citizenship is impeded by the hindrances mentioned above. It is therefore essential that these hindrances should be removed. The virtues that go to make a good citizen are *intelligence*, *self-control* and *conscience*. These must be thoroughly instilled into the citizens. Unless a citizen is inspired by these ideals, he cannot be alive to the responsibilities that devolve upon him both in his capacity as a private citizen and a public official. Bryce suggests a

two-fold remedy, viz., (a) constitutional reforms and (b) development of national character. A reform in the structure of the government, though an external remedy, may go a long way in awakening a civic consciousness in the citizens. Extension of franchise, more frequent elections, introduction of referendum, initiative and recall will make the citizens conscious of their rights and induce them to take increasing interests in public affairs. The development of national character is perhaps the best remedy for removing the hindrances to good citizenship. They should be taught the right ways of thinking and living. It is only the liberalising influence of a system of broad-based education that can improve the faculties of citizens and make them fit for taking their place in the life of the community. Right type of education, by dispelling the mist of ignorance, helps the citizens to learn proper civic conduct. "The seed of education will ultimately yield a harvest in the field of politics, though the grain may be slow in ripening." Popular government, in the true sense of the term, does not mean government by the ignorant masses, but it is a government conducted by the intelligent and well-meaning people.

### **Citizenship in a Federal State.**

There are two sets of government—national and local—in a federal state and it is only natural that citizens in a federal state owe a double allegiance. They are to obey the laws enforced by both the governments and pay the taxes levied by both.

This double citizenship is more prominent in the case of the U.S.A. citizenship than in any other country. In addition to state citizenship which is determined solely by residence, every person has a federal citizenship which can neither be denied nor minimised. In the case of double citizenship where citizens are required to obey two distinct authorities, as in the U.S.A., a question naturally arises as to which of the two is prior and more important. The fourteenth amendment of the U.S.A. constitution has clearly defined the position of the U.S.A. citizens. This amendment has laid down that all inhabitants of the U.S.A. are primarily federal citizens and state citizens only secondarily. The acquisition and loss

of federal citizenship are determined by special federal laws while state citizenship can be acquired or lost by mere change of residence

Citizenship in the Swiss federal republic is dependent primarily on citizenship of a Canton. Any person acquiring the citizenship of a Canton automatically becomes a citizen of the Swiss Republic. So in Switzerland, priority and importance have been given to Cantonal citizenship while federal citizenship is only secondary.

According to the Weimar constitution of Germany federal citizenship was given priority and precedence over state citizenship.

In the Soviet Union, the citizens are primarily Soviet citizens and the laws governing acquisition and loss of citizenship are framed by the Central Government. The Soviet citizens are local citizens only for electoral purposes.

Citizenship in India is extremely unitary and centralised. In India, no other citizenship excepting Indian citizenship is recognised by the constitution. A person may move from place to place within the country but change of residence will not effect his political status in any respect as in the U.S.A. Laws governing the acquisition and loss of citizenship are enacted solely by the Union government the states having no share in it.

It is claimed on behalf of the Indian system that under the system of single citizenship as it obtains in India, there is hardly any scope for discrimination between citizens in the matter of conferring voting rights or making appointments to government offices. But in countries having a double citizenship, each state may discriminate against the citizens of other states.

## SUMMARY

I. *Definition and Character* A citizen is a member of a body politic and enjoys both civil and political rights attached to such membership. He has also duties to the state. Citizenship now means more than the mere membership of a state. A citizen in a modern state is now expected to do some useful service to the community.



II *Citizen and Subject* The distinction between the two has lost all practical importance with the growth of the democratic ideal, though the term *subject* is some times used to denote the status of a subject people as the Indians before their attainment of independence.

III *Citizen and Elector.* The two should not be identified. An elector is a voter but he may not be a citizen. The son of a citizen is a citizen but not necessarily an elector.

IV *Citizen and Alien.* An alien is a foreigner who enjoys full civil rights but not all political rights. A citizen enjoys all civil and political rights and is subject to the state in all matters.

V. *Citizen and National.* A citizen is one who enjoys all the rights but a national enjoys all other rights excepting the right to vote.

VI *Modes of Acquisition of Citizenship.* Citizenship may be acquired by birth, by naturalisation and by the incorporation of foreign territory. The acquisition of citizenship by birth is governed by the *Jus Sanguinis* and the *Jus Soli* principles. According to the former rule, the citizenship of a child is determined by that of his father, according to the latter, place of birth determines the citizenship of a child. The difference in the application of the rules may give rise to double nationality of a citizen who has, of course, the right to renounce one.

VII Citizenship may also be acquired by naturalisation which includes a variety of methods, viz, marriage, legitimation, purchase of land, etc. Naturalisation proper implies the grant of citizenship on a foreigner on his fulfilling certain conditions. A naturalised citizen enjoys almost all the rights of a natural-born citizen.

VIII. *Loss of Citizenship.* Citizenship may be lost by marriage, by long absence, by deserting the army, or by voluntary withdrawal.

IX *Hindrances to Good Citizenship.* The hindrances to good citizenship are indolence, private self-interest and party spirit.

X *Remedies.* These may be removed by the introduction of democratic methods such as compulsory voting, referendum and initiative and also by a proper system of liberal education imparted to citizens.

XI *Citizenship in a Federal State.* A citizen in a federal state owes a double allegiance—allegiance to the national government at the centre and to the state in which he resides. In the U S A, federal citizenship is primary and more important and state citizenship is only secondary and may be acquired or lost by change of residence. In Switzerland, citizenship is primarily

, ' Cantonal and a citizen of a Canton automatically becomes a citizen of the federal republic In the U.S S R , the citizens are primarily Soviet citizens In India more than anywhere else, there is a single citizenship, viz , Indian citizenship which is determined solely by laws enacted by the Union government

## QUESTIONS

1 Differentiate between People, Citizens, Subjects and Electors (C U 1925 )

2 What do you understand by a citizen ? In what way is the position of a citizen superior to that of an alien ? What important differences concerning the acquisition of citizenship exists in the law of various states ? (C U 1930 )

3. What are the hindrances to good citizenship ? How can you remove them ?

4 Distinguish between a natural-born and a naturalised citizen What are the elements of good citizenship ?

5 "Citizens born abroad of United States are American citizen *Jus Sanguinis*, while children born in the United States of aliens are American citizens *Jus Soli* " Explain the statement and show how conflicts of jurisdiction are adjusted

6 Explain carefully the rights and duties of citizenship (C U 1948 )

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## CHAPTER VIII

### LIBERTY, EQUALITY AND RIGHT

#### References

J. S. Mill—On Liberty.

Laski—Liberty in the Modern State

Laski—Grammar of Politics. Chs III, IV.

R. H. Tawney—Equality

Joad—Liberty Today.

#### Meaning.

The word liberty has been used in so many senses that it led the famous French writer Montesquieu to remark "There is no word that admits of more various significations, and has made more different impressions on the human mind, than that *liberty*" It is therefore necessary to explain the contexts with reference to which the term is generally used

(a) **Natural Liberty.** Natural liberty is often identified with the right of an individual to do whatever he likes without any regard to the rights and claims of others. In this sense liberty means nothing but licence. The doctrine of natural liberty is closely connected with the idea of law of Nature which assumes that Nature is the embodiment of universal law. The general rules of human action are based upon the law of Nature as interpreted by human reason and conscience. Thus the doctrine of natural liberty was considered as conferring some inalienable rights on man and was used as a moral check on the authority of a ruler. The advocates of the theory of natural liberty point out that man is by nature free and they quote Rousseau in support of their theory "Man is born free, and everywhere he is in chains" They therefore argue that increasing control of government leads to the curtailment of the original rights of man. But the protagonists of the theory of natural rights forget the fact that even Rousseau had to admit the necessity of creating by means of a contract a civil society where man "gains civil liberty and proprietorship of all he possesses" in exchange for "his natural liberty and unlimited right to everything he tries to get and succeed in getting" in the state of nature

The people may have certain fundamental rights but it would be going too far to assert that liberty of an individual is absolute. This is the most unscientific use of the term *liberty* which implies unrestricted freedom of the individual. Liberty is impossible in a state where there is no restraint.

**(b) Civil Liberty.** The term is also used to mean civil liberty which implies freedom of action of the individuals in respect to personal action. The state guarantees to the individual certain rights, viz, the possession and use of one's property, religious belief, freedom of thought and expression of opinion. These are rights which the individuals seek to safeguard both against the government and other individuals. Private law of a state protects the civil liberty of an individual from encroachment by other individuals while the liberty of the individual is safeguarded by the public law of the state from undue interference by the government. Civil liberty, in English-speaking countries, implies the idea of rule of law but in France and in the Continent, civil liberty is guaranteed by a separate law regulating the conduct of public officials known as the Administrative law. Civil liberty is upheld by all democratic states but in times of war or revolution when the safety of the state is at stake, these may be curtailed or even abrogated.

**(c) Political Liberty.** It implies the right of the people to participate in the affairs of the state. Leacock calls it constitutional liberty which denotes the right of having a share or a voice in the administration of the country. The right to vote at elections, the right to hold public office, the right to form political associations, etc are the items of political liberty. The Indians could not long enjoy full political liberty as they were under the subjugation of a foreign power though at present they are a free people. Only a truly national government can ensure this type of liberty. But it must be borne in mind that political liberty in the absence of economic equality is held to be a mere myth. In England, more than half the national income is enjoyed by only 10 p.c. of the population and the remaining 90 p.c. have to live upon less than half the national income. In such a country, political devices like universal suffrage, freedom of the press and the

like cannot give real freedom to the people who have been reduced to zero as a result of the great disparity of wealth.

**(d) Economic Liberty.** The late President Roosevelt of the United States of America emphatically stated that the post-war reconstruction of society and government must be based on freedom of speech, freedom of religion, freedom from want and freedom from fear. Economic liberty means not only the right of choosing one's occupation, but also freedom from want and freedom from fear. Prof. Laski has also stressed the importance of securing economic liberty to all. The present system of distribution of wealth enables the few to roll in riches while the majority languish in poverty. If starvation constantly stares a man in the face in spite of hard work, if he is constantly haunted by the fear of unemployment and if his livelihood depends on the whims of an unsympathetic employer, liberty will be meaningless to such a man. It is the duty of the state to ensure to every individual a minimum but a decent standard of living. Economic liberty, according to Laski, presupposes a condition of society where "there must be sufficiency for all before there is superfluity for the few." Economic liberty consists in the right to work, the right to reasonable hours of work and reasonable wages, and the right to unemployment benefits when the state fails to provide employment to its citizens. It also implies a share in determining the conditions of work. Without economic liberty there can be no civil and political liberty.

**(e) National Liberty.** National liberty implies the independence of a nation from outside control. When a country is free from foreign control, it can enjoy national liberty. It is only national liberty that can ensure political liberty to the citizens. As India so long did not enjoy national liberty, the Indians could not enjoy full civil and political liberty. Political liberty is thus intimately connected with, and dependent on national liberty.

**Law, Liberty and Authority.** Having discussed the different aspects of liberty, let us now examine its true nature and significance. The word *liberty* is derived from the Latin word *iber* meaning free. In popular sense, liberty means unrestricted freedom to do as one likes. But this is a serious misconception

of liberty. The unrestricted power of a person to do as he likes is fraught with dangerous consequences. It will usher in a regime of license for the more powerful few and no liberty for the many weak. In order that all may enjoy liberty, it is necessary that some restraints must be placed on the freedom of actions of every person. John Stuart Mill in his famous essay *On Liberty*, explains the principle thus "the only freedom which deserves name is that pursuing our own good in our own way so long as we do not attempt to deprive others of theirs or impede their efforts to obtain it." Liberty therefore in its nature involves restraint because the liberty of one cannot be the negation of liberty to another. Thus liberty in the true sense of the term means the freedom of action granted to the individual by the state on condition of his allowing others to enjoy the same liberty.

Thus conceived, liberty is not incompatible with the authority of the state nor is liberty always in inverse ratio to the amount of state legislation. Liberty is possible only in an ordered state. The state, by defining and setting limits to the liberty of each, helps to secure and guarantee liberty to all. The state makes laws which place restraint on the absolute freedom of action of individuals. Law therefore converts license into liberty. Had there been no law and no authority to make and enforce law, there would be no liberty for all but only for the favoured or the powerful few. Liberty, as has been pointed out by an eminent writer, is a social conception and as such it cannot exist without social restraint. These restraints are formulated and enforced by the state in the form of so many rules of our social conduct by which liberty is made available to all members of society. The state has been vested with sovereign power for the purpose of exacting obedience to its laws which are agencies for protecting the liberty of its citizens. Thus conceived sovereignty and liberty are not contradictory terms. The state is therefore the guardian of liberty inasmuch as laws are sustained by the state. The state confers liberty upon its citizens by means of its laws and protects it also with laws. Thus law protects and promotes individual liberty in three different ways. *Firstly*, law protects the liberty of the individuals from invasion by others and *secondly*, it prevents individual liberty from being unduly interfered with

by the authority of the government. Private law of the state defines and regulates the rights enjoyed by the citizens against one another while public law protects the rights which the citizens enjoy as against the state. *Thirdly*, law creates and fosters certain conditions of social life which are conducive to the fullest development of the personality of the individual. Thus modern civilised states enact factory laws, laws regarding sanitation, education and health, all of which are calculated to promote the real liberty of the individual. So it is said that *law is the condition of liberty*.

**Liberty in the Modern State.** Liberty, as has been said above, "is the eager maintenance of that atmosphere in which men have the opportunity to be their best selves" Now the extent to which citizens in a modern state enjoy liberty depends on the sincere effort made by the state to create and maintain that atmosphere in society in which men are in a position to be their best selves, i.e., to develop their personality according to their natural aptitude.

In countries where democracy has been replaced by dictatorship, liberty of the individual becomes the first victim. Dictatorship is essentially based on force and by the application of force, it suppresses all fundamental rights of citizens including freedom of thought and expression, freedom of movement and correspondence, and freedom of association without which the development of the personality of the individual is impossible. Instead of creating an atmosphere in which men get free scope for development, dictatorship creates an atmosphere of fear, suspicion and intrigue which tend to dwarf the mind and intellect of its citizens who are ultimately reduced to the position of slaves. Leaving aside the case of dictatorship which does not even pretend to be either the guardian or the promoter of liberty, let us turn to modern democracies which claim to be welfare states—a term which has very recently come into vogue although it has as yet no clear-cut definition. In almost all democracies, the fundamental rights of the citizens, civil, political and economic, have found place in the sanctuary of the constitution and have been zealously guarded and protected. But whenever any of these fundamental rights guaranteed by the constitution comes in conflict with the power

that be, the government does not hesitate to suspend or even to abrogate these rights in order to maintain its power, position and prestige. Besides, in almost all democracies, young or old, the executive has become so powerful that it can ride roughshod over the rights of the people.

Theoretically, it cannot be denied that citizens in a modern democracy have been given full freedom of thought and expression but the question is can they make them effective. Can they bring the pressure of their opinion to bear upon the power that be? There is not only a strong opinion on a national basis in every country but also a very strong international opinion against the manufacture and use of atom and hydrogen bombs but has this opinion been able to stop this suicidal practice of the powerful governments of the world. The democratic states have adopted so many undemocratic devices by means of which they can influence public opinion in their favour or can stifle it altogether.

Lastly, modern governments, democratic or dictatorial, are based on, and supported by, political parties. Party propaganda through the agencies of the Press, Platform and the Radio has not only stifled the growth of an independent public opinion in a state but has induced people to swallow the opinion which the party in power chooses to supply. Modern democracies claim to be welfare-states and on the basis of this claim, the state exercises a sort of paternal control over the citizens by regulating all the aspects of their life, public as well as private. In such a mechanical atmosphere, freedom of thought and expression cannot possibly grow. The process of regimentation of social life may have its beautiful aspect but when it is made to subserve the interest of the ruling coterie, it is likely to defeat the end of the state.

**Liberty and Equality.** The ideals of liberty and equality are the foundations of modern democracy. But really they are the two aspects of the same thing. We have already examined the nature of liberty, let us now discuss what is meant by equality and its relation to liberty.

In the popular sense of the term, equality means that all men are equal and are therefore entitled to equality of income and treatment. But this is a wrong use of the term. Equality



does not mean identity. It does not mean that all men are equal or that they should be made equal. No two men are alike in any respect, either in body or in mind. Men are born with different capacities and aptitudes and therefore it would be wrong to equalise them. Equality, in its true sense, means that equal opportunities should be given to all, irrespective of race, influence or wealth. The state should make no discrimination between man and man. It should grant equal civil and political rights to all. Equality therefore implies equal treatment by the state. In its negative aspect, it means absence of special privileges. The existence of special privileges for the few means a negation of the principle of equality.

In its positive aspect, equality means that the state should provide adequate opportunities for all so that every one is able to develop his ability to the fullest extent. Equality implies an order of society in which none will enjoy special privilege by reason of his birth or status in society and none will be deprived of his right to receive an education according to his aptitude. In short, equality does not mean identity of treatment, what it really means is equal opportunities for all.

Thus conceived, there cannot be any antagonism between the ideals of liberty and equality. True liberty cannot exist in the absence of equality. Similarly, equality is impossible without liberty. Civil liberty is secured to all only when all are equal in the eye of law, when the law of a country makes no distinction between man and man. The recognition of equal political status of all citizens—rich or poor—is the first condition of political liberty. The principle of 'one man, one vote' is an accepted dogma which helps to secure the political liberty of all citizens. As Bentham says, "In the division of power and of happiness, at which democracy aims, each must count for one, and no one for more than one." Equality is thus the basis of liberty.

### **Origin of the Ideal of Equality and its Application to Modern States.**

The claim to equality in the face of inescapable inequalities of men is based on historical as well as on moral ground. As it has been pointed out by Prof. Ritchie, the doctrine of equality is the direct descendant of its opposite number, viz., inequality.

which existed in the ancient societies in the form of citizens and slaves, nobles and commons. The principle of equality therefore arose out of the protest of the many against the privileges of the few.

Judged from the ethical point of view, the ideal of equality has its origin in the fact that all men are equal in so far as they possess rationality and in this respect man is more like a man than he is like a beast. Man can look before and after and this separates him from the animal world and connects him with his fellow-being. In actual life, it may be that one man is mentally and morally far inferior to his neighbour owing to lack of opportunity for developing his rationality to the fullest extent, but is it not the moral duty of his more rational fellow-men to pull him up to their level? At least, the common interest of humanity demands that all men should think rationally and act rationally, for, when men learn to think and act on right lines, the causes of all conflicts between man and man, between nation and nation will be removed.

Granted the principle of equality is recognised by modern societies, the question is how far the ideal has been realised in modern states. Equality is a condition precedent to liberty which has been defined by Laski as "the eager maintenance of that atmosphere in which men have the opportunity to be their best selves." The opportunity must therefore be made available to all to the extent to which it is necessary for men to be their best selves. Equality interpreted in terms of opportunity, implies equality not in one aspect but in all aspects of social life. In other words, it implies social, political, legal and economic equality.

*Social equality*—It implies the idea that no man should suffer from any disability by reason of his birth or no one should enjoy a special privilege on account of his pedigree. The division of society into so many castes, each distinguished from the other not only by dress, drink and manner of living but also by the range of privileges possessed by one and denied to others, is a negation of the principle of equality. A caste system based purely on hereditary principle without any reference either to function or merit militates against the principle of social equality. In this sense, social equality presupposes a

classless society. The French Revolution destroyed the class distinction in France. In England, the nobility, though survives, is not a rigid caste. It is fluid in nature inasmuch as there is a constant flow between the nobility and the commonality. The Indian caste system, though originally fluid, degenerated into a water-tight system which soon became an engine of oppression utilised by the hierarchy of castes to exploit their fellow-men of the lower castes. But the liberalising influence of Western education and the crusade started against the system by the late Mahatma Gandhi have broken down the rigour of the caste in India. The New Constitution of India has also provided for the social equality of her citizens by a declaration of the fundamental rights and by expressly forbidding the practice of 'untouchability' in any form.

*Political equality*—It means universal adult suffrage, the equal right of all adults to be elected or appointed to public services. But this does not mean that all can or will have equal voice in the affairs of the state but the conferment of the right simply removes the hindrances. The exclusion of minors, lunatics and criminals from the right to vote stands to reason but the exclusion of women from the enjoyment of this right as in France, Germany, Switzerland, can hardly be justified. The system of plural voting which confers upon a citizen a second or a third vote (India) is in direct opposition to the principle of political equality. The prescription of a higher age qualification for membership in the upper house of legislatures as in the Senate of the U.S.A., and the Council of States of the Indian Union or a hereditary chamber as in Britain, is hardly compatible with the principle of political equality.

*Legal equality*—It implies the idea of legality and impartiality of law, i.e., no man is above law and no one can be punished except for a distinct breach of law proved in a legally constituted court. But legal equality seems, at first sight, to be violated by the existence of administrative courts for the trial of public servants for offences committed in their official capacity. The system prevails in France and in Continental Europe. Even in common law states where 'the rule of law' prevails as in England, special administrative courts are created,

whenever necessary. The exemption of the President, Governor and some other high officers of the state from the jurisdiction of ordinary courts as prevails in the U.S.A., India, though an infringement of the principle of legal equality, can be justified on the ground of public consideration. But the most serious obstacle to the realisation of the ideal of legal equality lies in the inequality of income in modern society. The inequality in the distribution of wealth has brought into existence the richer and the poorer classes and the richer class is certainly in a more advantageous position to get greater amount of protection under law in so far as money can bring it by its liberal expenditure for successfully conducting a litigation. This brings us to the question of economic equality.

*Economic equality.*—Economic equality does not mean that all should possess equal amount of wealth but what it really means is that equality up to the margin of sufficiency must be ensured to all. As has been pointed out by Laski, "there must be sufficiency for all before there is superfluity for the few." The existing inequalities of modern society is great and in order to secure economic equality, the glaring inequalities of existing fortunes must be reduced by providing for adequate opportunities for all. Differences of income there must be, but these differences are justifiable when they are based on greater social service and not on exploitation of one class by the other by reason of their more advantageous position in society. The ideal of economic equality is harder of realisation but it is a hopeful sign that almost all the civilised states have realised the importance of the ideal. The forces of communism have already invaded the domain of vested interests which are gradually though reluctantly relaxing their control over the good things of the earth. The only country where an attempt has been made not only to reduce the glaring inequalities of income but also to ensure a minimum to all is the U.S.S.R., the economic foundation of which is the Social system of economy and Socialist ownership of the means of production and the abolition of the exploitation of man by man in accordance with the principle, "He who does not work, neither shall he eat." The inequality is the greatest in Britain and the U.S.A. In Britain, ten per cent of the population enjoy more than half the national income; the

other ninety per cent must live upon less than half the national income. In the face of this glaring economic inequality in Britain, political democracy in that country has lost all meaning to the average voters.

**Rights and Duties.** Membership of the state confers upon a person certain rights, civil and political. Citizenship thus carries with it certain rights and these rights imply duties as well. A right has been defined as a power which enables a man to act according to his desire. But his desire to act freely may cause inconvenience to others. Thus if everyone is allowed to act freely and exercise his rights unbridled, life would become intolerable under such a condition. Only the stronger or the more cunning will enjoy right. But man is a social animal. He cannot lead an isolated life cut off from the rest. He has to live along with others in groups and in associations, big or small. "You will stand by me and I will stand by you,"—this is the principle that makes human life possible. Therefore everyone in society has certain claims on others, and others have also certain claims on him. These claims and counter-claims are the contents of rights. Rights are, therefore, the product of man's social life, but outside society, there cannot be any rights.

The highest aim of man's life is the development of his personality, the fullest expression of all that is best in him. Aristotle, the great Greek philosopher says, "Life is not merely living, but living well." It is for the sake of good life that we live and good life requires for its development certain conditions, which it is the duty of the state to ensure to its members. Rights may therefore be defined in the words of Laski thus. "Rights are those conditions of social life without which no man can seek in general, to be himself at his best."

**Correlation of Rights and Duties.** But it must be borne in mind that every one living in society is entitled to similar rights and that rights can be exercised for the good of society. Everyone has a right to life and property. But his right to life and property will make him conscious of the fact that others also possess similar rights and it is his duty to respect the rights of others. I have a right to education but I am duty-bound

to use my education in such a way as to contribute to the social good. The consciousness of common interest is the very foundation of rights in society. Rights of a citizen have therefore their corresponding duties which mean obligations. The rights of one imply the duties of others. My right to life implies that it is the duty of others to allow me to live and it also imposes an obligation on me to let others live. It also implies that it is the duty of the state to help the individual to enjoy his rights. Rights are not empty claims. They are correlative to functions. Thus rights and duties are two aspects of the same thing. Citizens therefore cannot enjoy rights unless they are prepared to do their duties. The state acts as the custodian of the rights of all. Rights are not only maintained by the state but they are also enforced by the state.

**Classification of Rights.** Rights may broadly be classified under two heads *Civil* and *political*. Citizens of a state enjoy civil rights both in relation to the state and to other individuals. A number of civil rights enjoyed by citizens constitute their civil liberty. The fundamental civil rights of a citizen are (a) Right to life, (b) Freedom of movement, (c) Right to work and property, (d) Right of reasonable wages and hours of work, (e) Freedom of contract, (f) Freedom of association, (g) Freedom of religion and conscience, (h) Freedom of speech and press, (i) Right of family life, (j) Right to education.

It must be remembered, however, that these rights do not mean unrestricted freedom. Every right has a corresponding duty. Thus every individual has a right to life which implies the right of self-defence as well. But if he kills another, he will forfeit his right to life. The state as the custodian of the rights of all will deprive him of his own life or award other deterrent punishment. Similarly, freedom of thought and opinion means that a person can express his ideas of public good and realise truth in life. If he is denied this right, he will cease to think seriously on any matter. If a person ceases to think, he cannot be expected to play his role as a good citizen. Citizenship has been defined by Laski as "the contribution of one's instructed judgment to common good." How can a person to whom freedom of thought and opinion has been denied contribute to the social good? But this does not

mean that he is free to express his opinion as he likes. Freedom of opinion should not be abused by slandering or scandal-mongering. In that case, the state is justified in suppressing freedom of opinion by the ordinary law of libel.

The extent of the civil rights enjoyed by citizens in a modern state is far greater than that enjoyed by citizens of the ancient world. The ancient state exercised a paternal control over its citizens and there was practically no aspect of a citizen's life which was really outside the control of the state. But individual liberty is an accepted dogma in modern times. Modern political thought exalts the individual and thus leaves ample scope to the individual for self-development. The rights enumerated above are therefore regarded as almost inviolable.

*Political rights* are nothing but the contents of political liberty which includes the following rights:—(1) The right to franchise (2) The right to be elected as a member of the Legislature, (3) The right to hold public office in any service of the government, (4) Freedom of opinion which implies the right to discuss and criticise government measures.

The possession of the above rights enables the citizens to influence the policy and actions of the government either directly or indirectly through their representatives. The right to vote is very important inasmuch as it gives the voter the right to participate in political affairs. It makes him conscious of his own position in society and enables him to feel that he is a self-directing man. No adult citizen should be debarred from the exercise of this right on grounds of sex, poverty or ignorance.

The right to be elected as a member of the Legislature is not allowed to all. Only those who have the capacity and willingness to serve the community seek election to Legislatures or to Local bodies. The right to hold public office implies that every one should be given equal opportunity to hold office under the government provided he is found fit to hold office. No person who has been declared fit by a competent authority should be denied the right of holding a post by reason of his caste, colour or religion. The right to discuss and criticise government policy and measure is regarded as an

important right. The government of civilised countries welcome all helpful and constructive criticisms from the public. These criticisms enable the government to form an idea about public opinion on government measures. Once the government gets an idea of popular feeling, it moulds its policies accordingly. No popular government will attempt to stifle public opinion.

It is argued sometimes that freedom of opinion may be suppressed in times of war and the state is justified in doing so for its own safety. There is no doubt that war creates an emergency in which the whole nation should unanimously support the policy of the government. But this does not mean that the state possesses absolute power by virtue of which it can make war at any time without any reference to the will of the people. Prof. Laski is emphatically of opinion that the outbreak of war does not alter the character of a man's right to free expression of opinion. The citizens cannot be compelled, on penalty, to think according as the government thinks. They have a right to differ and this right to hold individual opinion constitutes the essence of citizenship. Laski asserts that the citizen "must support the war if he think it right and oppose it if he think it wrong". A government which is based on the consent and co-operation of the people will seldom have any such necessity of suppressing public opinion. The aim of popular government is to secure full civil and political liberty to all and therefore there should not be any conflict of interest between the individual and the state either during war or peace.

### **The Doctrine of Natural Rights.**

Many writers have laid great stress upon a number of rights which are believed to be conferred on man by nature. Man is born with these rights which inhere in him. These rights comprise the right to life, liberty, property and the pursuit of happiness. Inborn, permanent and inalienable as these rights are, the state cannot deprive any man of any of these rights, for, "They are as much a part of his nature as the colour of his skin and the power of locomotion".

The doctrine of natural rights, originally a product of Greek political speculation, received a special prominence in the hands of the three social contract writers, namely, Hobbes



Locke and Rousseau. Hobbes interpreted natural rights in terms of power which enabled a man to satisfy his desires without any reference to the convenience or inconvenience of others. To him, natural rights were based solely on might. Locke was more reasonable in his definition of natural rights. His state of nature was characterised by equality and freedom for all. But due to certain inconveniences of the state of nature, men agreed to form a civil society by foregoing some of the rights with a view to protecting the more important rights, viz, the right to life, liberty and property. The theory of natural rights assumed a different form in the hands of Rousseau who made the general will the guardian of the rights of the people. According to him, men enjoyed equal rights in the state of nature and even after the transfer of rights to the general will, they remained substantially equal as integral parts of the general will. So, according to Rousseau, these rights are neither inalienable nor inherent rights of man.

The doctrine of natural rights exerted a tremendous influence on the framers of the American and the French constitutions. In both the countries, the doctrine was given a great practical importance in the Declaration of Rights of Man and it became the very foundation on which the constitutions were drawn up. In both the countries, the constitution began with the declaration of these inborn, inalienable and equal rights of man and the primary duty of the government was to secure and promote these rights which include "liberty, property, security and resistance to oppression."

The old theory of natural rights has been rejected by the modern sociological school of writers who have offered a more rational explanation of natural rights. The chief exponent of this school is Professor Giddings who is of opinion that man is not born with a number of interests and inalienable rights rather these rights he secures as a social being and these rights can be exercised in the sphere of social relations inasmuch as they promote both individual and social good. Professor Laski has interpreted natural rights in the sense that without them, no man can develop his personality to the fullest extent and it is therefore imperative on the part of the state to maintain a system of rights which guarantees to the individual such rights as the right to freedom of speech, freedom of association, the

right to work, the right to an adequate wage, the right to rest and leisure and the right to vote and represent.

The above discussion reveals the fact that there is a fundamental difference between the old view and the modern view about natural rights. While the earlier advocates of the theory of natural rights sought to explain the origin of the state in terms of these rights, its modern exponents seek to justify the existence of the state as the custodian of these rights. A state which cannot guarantee to its citizens these rights cannot possibly claim any valid allegiance from them.

### **Criticism.**

*Firstly*, the doctrine of natural rights has been criticised as unreal on the ground that the word 'natural' admits of different meanings and that there is no unanimity of opinion regarding rights which are called natural.

*Secondly*, the notion of natural rights is variable and as a matter of fact the doctrine has varied from age to age. What might be considered as a natural right in one particular age might not be considered as a natural right in a subsequent age. Thus the right to keep slave was considered natural and necessary in Aristotle's time but this right is now considered as a violent breach of human rights which is punishable by law.

*Thirdly*, rights can have no existence apart from and outside the state. Outside the state, there can be rights which are based solely on might. Might tempered by social forces is transformed into right and the state is the only source of rights because it provides opportunity to all so that everybody can seek to develop all that is good in him.

### **Fundamental Rights.**

A critical examination of the rights leads us to the conclusion that none of these rights is absolute, on the contrary, each one of them is limited by the equal rights of others and also by considerations of social good. Every right is therefore to be exercised within the limits set by the state which is the custodian of the rights of all. In spite of these limitations, there are certain primary rights of man without which no man can

in general develop his personality to the fullest extent. In every civilized country, a great emphasis is laid upon them. For, they are indispensable to the fullest development of a man's personality according to his natural aptitude. Hence they are called Fundamental Rights which are broadly summed up in life, liberty, property, freedom of conscience, etc.

These rights are given so much priority and precedence over others that special provision is made in the constitution to safeguard them properly against encroachment by individual caprice or by governmental high-handedness.

In federal states like the U.S.A. and India, these rights are enshrined in the constitution to impart a sanctity and special force to them. If these rights are invaded in any way by any authority, judicial decision protects them by declaring such encroachment as *ultra vires*. In England, the rights of the citizens have not been protected by the provision of a written constitution rather the general principles of the constitution are the result of judicial decisions determining the rights of citizens in particular cases brought before the courts.

But it should be borne in mind that a mere enumeration of these rights in the constitution of a country is not an adequate guarantee for the enjoyment of these rights. They are given a place in the constitution with a view to giving proper emphasis on their importance in the life of the citizens. Rights when guaranteed by constitutional provisions cannot be very easily encroached upon either by the executive or by the legislature. Thus constitutional provision for fundamental rights ensures to the individual the enjoyment of certain rights by limiting the powers of the government and thereby reconciling the liberty of the individual with the authority of the state.

### **The Right to Revolution.**

One of the fundamental obligations of a citizen is allegiance and obedience to the state. In fact obedience to the state by the citizens is the very basis of the state. But the question is: is this obedience unconditional and unquestionable? Are there no circumstances when the citizens can question the validity of a law passed by the legislature or of an ukase enforced by the power that be? If obedience is

conditional, it will shake the very foundation of the state and if, on the other hand, obedience is unconditional, it will lead to oppressions and repressions which in its turn involves the spiritual death of the citizens

Citizenship has been defined by Laski as the contribution of one's instructed judgment to public good. In order that a citizen may contribute his best to social good, he must have the right to think and express what he considers to be conducive to public interest. If a citizen think that a particular policy or action of the government is detrimental to the interests of the people, it is his duty, as a true citizen, not only to criticise but also to oppose the government actually by organising public opinion. A government which fails to do its fundamental duties to the citizens, a government which places group interest above national interest has certainly no claim to the allegiance and obedience of its citizens and the citizens in their turn will be failing in their duties if they do not replace the government by one which is more popular in its character and contents. Some may say that the application of force for ousting an oppressive government is fraught with dangerous consequences, for violence begets violence equal in intensity and opposite in direction. Poets, philosophers and idealists have sung songs in praise of the non-violent method but history bears testimony only to the efficacy of the violent method. The revolution of the American colonies, the French and the Russian Revolutions were not fought in vain. The emancipation of the slaves and the recognition of the rights of labour came not exactly through constitutional and peaceful means. The Machiavelian maxim that the end justifies the means should not be the guiding principle of a popular upsurge against the government but it must be said that where constitutional methods fail to achieve the desired end, extra-constitutional methods must needs be adopted.

The relation between the government and the people is, in the last analysis, one of reciprocal rights and obligations, of protection and obedience. If the government can apply force against a citizen for non-conformity to its laws, there is no reason why the citizens should not have the right to use force against a government which fails to ensure to its citizens

those conditions of life without which they cannot develop all that is good in them. Viewed from this standpoint, the right to revolution seems to be natural and necessary.

**Safeguards of Rights.** The fullest development of a man's personality requires that he must have certain rights. They are regarded by all as precious possessions and so inviolable that any encroachment upon them will raise a storm of protest from all sections of the public. The question is how are the rights of citizens to be safeguarded?

(a) The fundamental rights of citizens in almost every state are guaranteed by *the Constitution* which is generally written and rigid in character. The constitution includes a Bill of Rights which ensures to the citizens the enjoyment of their rights free from any interference. The constitution of the U.S.A. was the first of its kind to issue a Declaration of the Rights of man. Later on the U.S.A. was followed by France and in more recent times, the Weimer Constitution of Germany (1918), the Constitution of the Eire (1921) and the Stalin Constitution of the U.S.S.R. (1936) included such Bills of Right containing a long list of rights of the citizens. The Indian Constituent Assembly also formulated certain fundamental rights which have been incorporated in the new constitution of India. But a declaration of the rights of citizens by the constitution does not necessarily guarantee the enjoyment of rights. The governing authorities reserve the right to suspend the rights during emergencies like war. When Hitler came to power, the Bill of Rights in the Weimer Constitution was practically abrogated.

(b) It is claimed by many English writers that the rights of citizens are better safeguarded in their country by what is known as *the Rule of Law*. Rule of Law implies legality and impartiality of law. Everybody, rich or poor, is regarded as equal in the eye of law. There is one law for all from the Prime Minister down to the man in the street. Legality of law implies that no person can be detained without trial by a legally constituted court. His guilt must be proved first and then only his liberty can be curtailed. If a person is unlawfully arrested and detained, he can apply to a court of law for a writ of *Habeas Corpus*. The court will try the case and

if there is no sufficient legal ground for his detention, the court will order his release. Thus the Rule of Law is an effective instrument of individual liberty.

(c) *Separation of powers* was regarded by many as a safeguard of rights. The idea gained ground that power should not be concentrated if liberty was to be maintained. If the three powers of the government—legislative, executive and judicial, were exercised by the same person or set of persons, there might be an abuse of power. So it was suggested that the three powers of the government should be entrusted to three different bodies each independent of the other. Thus arranged, if any organ of the government tends to encroach upon the liberty of the people, the others might act as a check on the former. But such a rigid separation of powers is neither desirable nor practicable. Besides, individual liberty does not depend on a mere mechanical separation of powers. In England, there is not only no separation of powers, but there is a good deal of combination of powers. Nevertheless the English people are free and enjoy full civil and political liberty.

(d) The rights of citizens in a modern state are better safeguarded by the *independence of the Judiciary*. Judges must be independent and impartial. They must not be subservient either to the Executive or to the Legislature. The tenure of office or promotion of judges should not depend on the whims of the Executive or the Legislature. An independent and impartial Judiciary thus acts as a bulwark of individual liberty against encroachment by other individuals as also by the government.

(e) By far the most important safeguard of liberty is the *freedom-loving spirit of the people*. There is a normal tendency in every government to infringe the rights of the people. But if the people guard their rights and are prepared to fight for their preservation, there will be no interference from outside. Indifference or callousness on the part of the people may give rise to a dictatorship, oligarchy or a bureaucratic government. Thus it has been aptly said that "Eternal vigilance is the price of liberty."

(f) *Democracy* is regarded as the best form of government, because it affords ample opportunity to the citizens to stand

up for their rights and therefore the rights and interests of the people are better safeguarded under democracy than in any other form. Democracy is a form of government in which ultimate power rests with the people who can replace a government by another in case of violation of their rights by the government in power.

**Duties of Citizens.** We have already seen that rights imply duties. A duty means an obligation on the part of a citizen, the performance of which will entitle him to the enjoyment of rights. Duties are of two kinds, moral and legal. *Moral duties* are enjoined on the citizen by his conscience or by the public opinion of society but they are not enforceable by courts of law. Nevertheless moral duties are the foundation of legal duties.

*Legal duties*, on the other hand, are enforced by the law of the land, non-performance of which entails punishment on a citizen. As the state is the source and guardian of all rights, it can claim something from the citizen in the form of obedience to its laws, military service in time of war, payment of taxes, etc.

The duties enjoined by the state on a citizen has a *positive* as well as a *negative* side. In its positive aspect, a duty involves the performance of certain tasks by the citizen as prescribed by the state, e.g. obedience to laws, payment of taxes, honest exercise of franchise, etc. There are also certain negative duties imposed by the law of the state upon the citizen. In every state, there are laws which impose a duty on the citizen not to interfere with the rights of other citizens. The duties of a citizen may be summarised as follows.—

(a) To obey the laws of the state, (b) to owe allegiance which implies the duties of service in war and helping public officers in maintaining law and order, (c) to serve the government in various capacities, (d) to pay taxes and local rates and (e) to exercise the right to vote honestly.

*Duties of the State* The state has also certain duties towards its citizens. In order that citizens lend their willing co-operation to the work of the state, it is necessary that the state should impart a healthy civic consciousness to the people. This can be done by making the citizens realise that their

interests are inseparably connected with the interests of society at large and that there is no conflict between the welfare of the individual and that of the community. It is therefore the duty of the state to make good laws which will give adequate opportunities to all to develop their personality according to their individual aptitudes. Laws should be so framed that the existing inequalities and injustice in every sphere of life is removed so that the citizens may feel secure and contribute their best to common good. It has been well said that "the work of a modern state runs to the roots of life, liberty, property and pursuit of happiness"

## SUMMARY

I *Meaning* The word *liberty* is used in different senses

(a) *Natural liberty* It means the freedom which a person is allowed to enjoy by the law of nature. Such liberty does not actually exist

(b) *Civil liberty* It means freedom of action and immunity from interference. Civil liberty is enjoyed by a man in civil society

(c) *Political liberty* It implies the power to influence the government of the state. The contents of political liberty are a number of such rights which enable a citizen to have a share in the authority of the State

(d) *Economic liberty* Economic liberty means the freedom from want and freedom from fear. It implies democracy in industry

(e) *National liberty* It means the independence of a nation from foreign control. In the absence of national liberty, the citizens of a state will not be able to enjoy full civil, political or economic liberty

II *Law, Liberty and Authority* Liberty, in the true sense of the term, does not mean a complete absence of restraints. In order that all may enjoy liberty for developing all that is best in them, liberty must be regulated by law. The institution of public authority places certain restrictions on the freedom of action of the individual. These restrictions are known as laws, meant for protecting the liberty of all. True liberty can therefore exist only under the state. Lawless liberty is licence

III *Liberty in the Modern State* Liberty of the citizens in a modern state depends upon the extent of opportunities



provided by the state to the citizens for the development of their personality

Dictatorship and liberty are mutually exclusive and they are contradictory terms. Dictatorship implies rule by one man supported by a single political party which tolerates no difference of opinion. Hence under dictatorship, liberty altogether disappears.

The democratic states of today take great care in maintaining a system of rights guaranteed by the constitution. But even in democracies, individual liberty has been threatened by (i) excessive state paternalism, (ii) rise of bureaucracy and (iii) rigid party control which stifles public opinion.

IV *Liberty and Equality* Equality, on the one hand, means absence of special privilege, on the other, it means that adequate opportunities should be given to all to develop all that is good in them. Thus true liberty can exist where the state is impartial in its attitude towards all.

V. *Origin of the Ideal of Equality and its application to Modern States* The ideal of equality of men was born of the inequality which existed in ancient societies in the form of invidious distinction between man and man. The ideal is a protest of the weak against unjust privileges of the strong. The claim to equality is based both on historical and ethical grounds. All men are equal in so far as they possess rationality which distinguishes them from the beasts. Equality implies social, political, legal and economic equality. In modern times, greater emphasis is laid on economic equality which means equalisation of opportunities to all irrespective of their birth or rank or status. In the absence of economic equality, political or legal equality becomes meaningless.

VI *Rights and Duties* A right is a power enjoyed by a citizen against others, and recognised and guaranteed by the state. It enables a citizen to reach his best self.

VII *Correlation of rights and duties* Rights imply duties. My right imposes a duty on me to respect others' rights. It also imposes a duty on others not to interfere with my rights. Thirdly, it imposes a duty on the state not to allow others to infringe my rights. Rights are therefore the counterpart of duties.

VIII *Classification of Rights* Rights are either civil or political. The contents of civil liberty are a number of civil rights, such as, (a) right to life, (b) freedom of movement, (c) right to work and property, (d) right to reasonable wages and hours of work, (e) freedom of contract, (f) freedom of association, (g) freedom of religion and conscience, (h) freedom of speech and press, (i) right to family life and (j) right to educa-

tion. Political rights consist of (a) right to vote, (b) right to be elected as a member of the Legislature, (c) right to hold public office, and (d) right to discuss and criticise the policy of the government

The rights enumerated above are not to be regarded as absolute. In case of abuse of any of these rights by the citizens, they may be deprived of their rights by the state. It is held by many writers that freedom of opinion is not subject to any restriction even during war.

IX *Safeguards of rights.* Rights of citizens are safeguarded in various ways, such as, (a) a written constitution containing a bill of rights, (b) rule of law, (c) separation of powers, (d) independence of the Judiciary, (e) spirit of the people and (f) democratic form of government. Of these, the last two are the most important.

X *Duties of Citizenship* Duty means an obligation. There are moral as well as legal duties. The legal duties of a citizen are (a) obedience to the laws of the state, (b) allegiance and service, (c) support of public officials and (d) payment of taxes.

XI. *Duties of the State* The duty of the state consists in making all men happy. It should make good laws which will enable the citizens to develop all that is best in them.

## QUESTIONS

1 "The liberty of an individual is not always in inverse ratio to the amount of state legislation." Examine and illustrate the statement. (C U 1939, Bom 1941)

2 Define equality. To what extent does the realisation of civil liberty depend upon economic equality? (Bom 1938)

3 Distinguish between civil and political rights.

What are the fundamental principles on which the latter is based? (Gauhati 1949)

4 Estimate the importance of freedom of speech and discussion. State how it is secured in various modern constitutions and discuss how far it should be interfered with in time of war. How would you secure your freedom in the future constitution of Swaraj India? (C U 1929)

5 "Rights and duties are two aspects of the same thing." Discuss. (Punjab 1938)

6 Distinguish between 'civil' and 'political' rights. How are civil rights guaranteed in (a) U S A, (b) England, and (c) India? (C U 1945)

7 Enumerate the more important fundamental rights which a citizen in a modern state enjoys. (C. U 1951.)

8. "Freedom of thought is the greatest prize to be won because it is the one condition of existence which makes life worth living" (C Lloyd)

Examine the statement (C. U Hon 1953)

9 What is meant by the term 'Liberty'?

How far is it correct to say that law is an essential condition of liberty? (Gauhati Hon 1948)

10 What is meant by the concept of Liberty?

"Sovereignty and Liberty are not contradictory terms"  
Examine this proposition. (C U 1957.)

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## CHAPTER IX

### THE CONSTITUTION OF THE STATE

#### *References*

C F Strong—Modern Political Constitutions Chs VI, VII

H Fine—The Theory and Practice of Modern Government, Vol I, Ch VII

Gairner—Political Science and Government, Ch XVIII

Gilchrist—Principles of Political Science, Ch X

#### **Constitution—its necessity.**

The basic principle of all governmental organisation in each state is the existence of a certain power-relationship between its individuals and the ruling body. This power-relationship has varied from age to age and this variation in the power-relationship partially accounts for the variety of the prevalent governmental system in the different stages of human history. In the earlier forms of governmental organisation, the right to participate in government was confined to a very small section of the total population while, in modern times, the right has been extended to all capable adults. If, therefore, the government of a state is based on a certain power-relationship, it is necessary that the relationship should be firmly based on a stable foundation. A good government is not enough, what is of real importance is the manner in which the government is conducted. A constitution therefore indicates the pattern of the state. The government of a state may stand in different relations with those whom it governs. But the awakening of political consciousness and the growth of democratic ideas among the masses have firmly established the principle that men should be governed by laws rather than by men. This idea gave rise to the necessity of a constitution—a body of rules—which bind both the ruler and the ruled and properly adjust the power-relationship.

**Definition.** A constitution may be defined as a body of fundamental rules which regulate the activities of a state. Every state must have a constitution. James Bryce says, "The constitution of a state or nation consists of those of its rules or laws which determine the form of its government and the

respective rights and duties of it towards its citizens and of citizens towards the government." Thus these fundamental laws determine the form, organisation and functions of the different organs of the government, their mutual relation and also the relation that exists between the government and the governed. Every modern constitution consists of three parts. *Firstly*, it deals with the rights of the citizens guaranteed by the constitution. The constitution begins with the declaration of the rights of citizens as embodied in a Bill of Rights and makes due provision for their protection against encroachment by the government. *Secondly*, it deals with the government. It sets forth an outline of the organisation and functions of the government, defining the mutual relations between the different organs and prescribing the manner in which the powers are to be exercised. A constitution thus ensures to the individual the enjoyment of certain rights by clearly defining and limiting the powers of the government. *Thirdly*, it makes provision for the amendment of the constitution. The process of amendment and the authority competent to amend the constitution are clearly set forth in the last part of the constitution.

**Classification of Constitution.** Constitutions are usually classified into (a) written and (b) unwritten.

(a) **A Written Constitution** is one in which the main body of fundamental rules have been laid down in writing either in a single document as in the USA or in more than one document as in the original constitution of France. All the provisions of the constitution are embodied in a formally enacted document or documents. A written constitution is therefore the result of conscious effort to lay down the fundamental principles of government in a systematic form.

(b) **An Unwritten Constitution**, on the other hand, is one in which most of the broad principles of governmental organisation are made up of customs, usages, judicial decisions together with a small body of statutory enactments. These rules have never been reduced to writing but they have grown from precedent to precedent in course of time. An unwritten constitution illustrates the truth of the statement that 'constitutions grow instead of being made'. The constitution of England is said to be mainly unwritten.

*Criticism.* But the classification of constitutions into written and unwritten lacks scientific accuracy inasmuch as no constitution is wholly written and no constitution is wholly unwritten. There are written elements in unwritten constitutions and unwritten elements in written constitutions. The British constitution is said to be unwritten but it contains written elements, such as, the Magna Carta, the Bill of Rights, the Great Reforms Act and others. Much of what was originally embodied in customs, usages has been gradually reduced to writing.

*Secondly*, the so-called written constitutions are not entirely written. It is impossible to embody all the principles of constitutional law in a documentary form. All written constitutions have therefore been inter-spersed with unwritten elements including customs, usages and judicial decisions. The constitution of the U.S.A. which is mainly written, contains many usages which determine the organisation and working of the government. The constitution makes provision for the election of the President by the indirect method through electoral colleges. But with the growth of the party system the President has become the direct choice of the people. Furthermore, the classification of constitutions into written and unwritten is misleading from another point of view. It indirectly implies the idea that in a state with a written constitution, the acts of the legislature are subject to revision by the judiciary and may be declared void if repugnant to the constitution. But this is not true in all states with a written constitution. The French Judiciary, for example, has no such power to nullify acts of the Legislature. Again it is claimed by many writers that the liberty of the people is better safeguarded by a written constitution than by an unwritten one. But this is not necessarily true. The Weimer Constitution of Germany was a written one but it could not protect the liberty of the people. The distinction is all the more misleading in view of the fact that it assumes that all the laws must be in a written form which excludes the possibility of the growth of conventions or customary laws. Written constitutions are sometimes called *enacted* constitutions while unwritten constitutions are referred to as *evolved* constitutions.

The truth is that a constitution is not a static but a dyna-

mic force which changes with the change of the political conditions of a country Woodrow Wilson has aptly remarked, "Living political institutions must be Darwinian in structure and practice" There can therefore be no constitution which is wholly written or wholly unwritten They simply convey the idea that some constitutions are predominantly statutory in character while others are mainly customary Such classification of constitution is wholly illusory and unscientific, the difference between the two being only one of degree and not of kind

**Merits and Demerits.** Written constitutions are generally precise and definite, though they are less adaptable to the changing needs of time and hence they may give rise to occasional revolutionary outbursts An unwritten constitution possesses the great merit of elasticity and adaptability, though lacking in the quality of stability and permanence

**Rigid and Flexible Constitutions.** In view of the unscientific and unsatisfactory character of the above classification, Bryce in his *Studies in History and Jurisprudence* gives a more scientific classification of Constitution He classifies modern constitutions into (a) *Flexible* and (b) *Rigid* The basis of his classification rests on whether the process of constitutional amendment is or is not the same as ordinary law-making process A flexible constitution is one which is elastic and therefore can be changed easily A rigid constitution, on the other hand, is one which it is very difficult to change The difference between the two therefore lies in the ease or difficulty involved in the amending process. If constitutional laws may be enacted and amended exactly in the same way in which an ordinary law can be enacted and amended, the constitution is said to be flexible The best example of a flexible constitution is furnished by the British constitution which can be changed by the British Parliament with the same ease and facility with which it can amend an ordinary law of the land. No separate procedure is to be gone through for effecting a constitutional change The British Parliament is both the law-making and the constituent authority. In a state with a flexible constitution, therefore, there is no difference between constitutional and ordinary laws and it recognises no higher legal authority than the ordinary laws

In a state with a rigid constitution, on the other hand, there are two sets of laws, ordinary and constitutional. Ordinary laws are enacted and amended by the ordinary law-making authority which is not competent to amend the constitution. The method of passing and amending constitutional law is not identical with, rather quite different from, the ordinary law-making process. In the U.S.A., the Congress is the ordinary law-making organ but it is not a constituent authority. Amendments of the constitution can be effected only by a special and complicated procedure. The constitution of the U.S.A. is rigid and the sole test of rigidity lies in its special amending process. But it should be noted that all rigid constitutions are not equally rigid. They vary considerably from the extreme rigidity of the U.S.A. type to the modified rigidity of the French type. Rigidity is rather relative. So too much importance should not be attached to the distinction between the rigid and the flexible constitutions. The written constitution of the U.S.A. is rigid but it is not so rigid and inflexible as one might think it to be. It will be far from truth to suppose that the process of formal amendment of the constitution is the only way by which the U.S.A. constitution can be amended to meet the requirements of a particular time. Process of formal amendment is only one of the several agencies through which the constitution is amended. As a matter of fact, since the drawing up of the constitution in 1789, only twenty-two amendments have been added to the constitution by the prescribed mechanism of amendment. But numerous other amendments have been effected as the result of usage and judicial interpretation which have made the formal procedure of amendment unnecessary and superfluous. The prescribed mechanism of the amendment of the U.S.A. constitution is so cumbrous that it has found some other agencies of change and these agencies are usages and judicial decision. In this sense the U.S.A. constitution is not less flexible than the British constitution.

**Merits and Demerits.** The two types of constitutions flexible and rigid, have their respective merits and demerits. The chief advantage of the flexible type lies in its elasticity and adaptability. It can be shaped and fashioned easily to meet



new conditions and emergencies. To an advancing community, a flexible constitution is a blessing inasmuch as it makes possible the adjustment of the constitution to the growing needs of the community. A flexible constitution is not considered as specially sacrosanct by the people. By providing legal means for altering the constitution according to the will of the people, it not only removes the tendency of the people to disregard the constitution but also minimises the chance of revolution. Another great merit of the flexible constitution is that it ensures steady and orderly progress of the community and thus acts as an index to the social progress made at different periods of a nation's life.

The great weakness of a flexible constitution is its instability. As it is flexible, it is always subject to the mercy of popular passion. Lack of stability takes away from it the sanctity associated with rigid constitution. It is unsuited to a federal type of government in which powers of both the national and local governments emanate from the constitution.

Stability and permanence constitute the excellence of a rigid constitution. As the fundamental laws of the state are clearly laid down in writing, it is very definite and precise. The rigid constitution cannot be easily changed and as such it is free from the dangers of temporary popular passion.

The demerits of the rigid constitution are the merits of the flexible constitution. The weakness of the rigid constitution lies in its strength, namely, as it cannot be changed easily it is unable to meet emergencies. Thus it retards political progress of a people and often increases the possibility of revolution.

**Methods of Amendment.** The process of amendment of the constitution of a state is largely determined by the nature and character of the constitution. If the constitution is of the flexible type it may be amended in the ordinary law-making process by the ordinary legislature of the land as in Great Britain. The British Parliament can amend the constitution without going through a separate procedure. But in the case of a rigid constitution there is no uniform rule for constitutional amendment. Generally speaking, there are four diffe-

ient methods of constitutional amendment in the case of a rigid constitution.

*Firstly*, a rigid constitution may require that amendment should be effected by the entire body of citizens. The system prevails in Switzerland and Australia. In both the countries, the initiative in proposing constitutional amendment is with the people but the proposals must be submitted to a referendum of the voters and approved by a majority of them. In Switzerland, fifty thousand voters also may take the initiative in proposing an amendment of the constitution.

*Secondly*, in the case of Federal states, the federating units must be consulted and an amendment will be valid provided the majority of the units is agreeable to the amendment proposed. Almost all federations follow this method. Thus in the U.S.A., the ratification of an amendment by a three-fourths majority of the states is necessary. Australia and Switzerland also require the consent of a majority of the units in addition to the consent of the majority of the electorate.

*Thirdly*, constitutional amendments may be effected by a different organ, created whenever such needs arise. The constitution of the U.S.A. provides that a convention may be called at the request of two-thirds members of each house of Congress or by two-thirds of state legislatures. An amendment proposed by such conventions or by the ordinary legislature must be ratified by three-fourths of the state-legislatures in order that it may be valid.

*Lastly*, a rigid constitution may be amended by the ordinary legislature not in the ordinary legislative process but under certain prescribed conditions. In France, proposals for constitutional amendment are to be approved by a substantial majority in both Houses and are to be submitted to a referendum. In the U.S.S.R., amendment may be made by the two chambers of the legislature by two-thirds vote in each chamber.

In India, an amendment of the constitution could be made only by the British Parliament which was the sole authority to alter the Indian constitution. The Indian Legislature was a non-sovereign subordinate law-making body, with practically no authority to amend or repeal the Constitution Act. But the Independence Act, 1947 conferred the power of

drawing up a constitution for the Indian Union by the Constituent Assembly of India. This Constituent Assembly was vested with the power of prescribing a method or methods for the amendment of the future constitution of India. The New constitution of India provides that an amendment of the constitution will ordinarily require a two-thirds majority of the members of each House of Parliament present and voting as well as an absolute majority of total members of each House. The proposed amendment shall stand amended upon President's assent being given to it. But an amendment affecting Presidential election, Executive power of a State, Parliament's power to constitute a High Court, or affecting the Union Judiciary or High Courts in the States, relation between Union and States, Union list of powers, the representation of States in Parliament or affecting the existing provision for the amendment of the constitution, will also require ratification by the legislatures of at least half the number of states under Governors and Rajpramukhs. Certain other amendments can be made by the Indian Parliament by the ordinary process of law-making.

**Modern Tendencies in Constitutions.** The constitution of a state is the expression of the national will and it will be far from truth to say that the national will can be definitely fixed up for all times to come in the form of a document. A constitution, whether flexible or rigid, is neither wholly evolved nor wholly enacted. The laws that regulate the activities of a modern state cannot remain the same but should be extended along with the progress of the social, economic and political life of the people. Where the constitution cannot be bent according to the needs of the time, it is likely to break. So provision for elasticity and adaptability should be made by every state for a spontaneous and healthy growth of its constitution. A constitution, whether rigid or flexible, grows in three ways—(i) *Usage* plays an important part in the growth of a constitution. Even in rigid constitutions, the operation of customs and usages supplement the constitutional laws and help its expansion by securing elasticity of the constitution. (ii) *Judicial decisions* have also moulded the character of the constitution in almost all countries. The British constitution

is said to be a judge-made constitution. The adoption of the doctrine of implied powers has profoundly influenced the working of the U.S.A. constitution. (iii) *Formal amendment of the constitution* involves a process of amendment of the constitution either by the ordinary process of law-making or by a special procedure. The constitution of the U.S.A. is typically rigid while that of Great Britain is typically flexible. But both of them are growing gradually and both of them are the product of usage, judicial interpretation and formal amendment of the constitution. But it must be borne in mind that the influence exerted by each of the factors may not be the same everywhere. Thus in Great Britain, the influence of custom and judicial interpretation is more prominent on the constitution than formal amendment while the constitution of the U.S.A. is based primarily on formal enactment, though not free from the influences of usages and judicial decisions. But the modern tendency in all constitutions is towards rigidity. Even the historic flexible constitution of England is leaning towards rigidity. Many of the unwritten laws have been codified and reduced to writing by formal enactment. The reasons for this gradual transition from flexibility to rigidity have been pointed out by Gilchrist as follows: (a) In the *first* place, the idea of modern democracy is to secure liberty to all and this can be done by restricting the powers of the government by a rigid constitution. (b) *Secondly*, true democracy implies decentralisation of power which has taken the form of creation of autonomous local governments. A rigid constitution is therefore considered essential in order to safeguard the rights of the people concerned and also to determine clearly the principles of the government. (c) *Thirdly*, whenever a change in the constitution is desired by the people, they insist upon making the basis of the new government more explicit and definite. (d) *Fourthly*, the federal form of government is gradually gaining in popularity. The rapid advance of federalism as a form of government has made it necessary to adopt a rigid constitution which alone can prevent future conflicts of jurisdiction by clearly marking off the spheres of the central and of the local governments.

## Contents of a Constitution.

The question may now be asked as to what a constitution contains. Is it merely a document containing a body of rules conferring power upon the government by virtue of which it rules? Or is it a charter of liberty that enables the citizens to enjoy their rights? The answer to the above questions is that a constitution is a body of rules that attempts to reconcile the authority of the state with the liberty of the individual so that there may not be any excess of either of the two. The function of a constitution therefore is to adjust the relation between the government and the governed in such a way as to ensure that general order in society in which the end of the state may be realised. A constitution should therefore be so framed that it must contain the following provisions:—

*Firstly*, a constitution should determine as to who should rule and who are capable of participating in the powers of the government. The limits of governmental power and the manner of exercising that power should be clearly defined by the constitution. So a constitution has both a positive and a negative aspect. Positively, a constitution is a grant of power because it determines what the government should do and negatively, it is a prohibition of powers because it prescribes what should not be done in the name of government.

*Secondly*, a constitution is a source of rights of the citizens. It determines the range of rights to be enjoyed by the citizens in relation to one another and also in relation to the government itself. It also prescribes the obligations of the citizens with reference to their government and also with reference to one another.

*Thirdly*, a constitution prescribes the manner in which the power of the government is to be exercised. It determines the mutual relation between the different organs of the government in order to ensure smooth and efficient work of the government.

*Fourthly*, a constitution must have its fundamental laws and methods by which the officials of the state are to be appointed. Almost all modern constitutions make provisions for the creation of a Public Service Commission which is entrusted with the task of making appointments to public services.

*Lastly*, a constitution must make provision for effecting necessary changes in the constitution whenever such changes are deemed necessary. The process of amendment and the authority competent to amend the constitution should be clearly defined in the constitution.

### Constitutional Government.

Now we are in a position to define a constitutional government. A modern state is unthinkable without a constitution. A constitutional government may roughly be defined as a form of government in which the governing power is in the last analysis vested in the people. The distinguishing feature of a constitutional government is that it is based not on the whims of those who possess political power but is conducted in accordance with laws which on the one hand ensures to a greater or lesser degree popular control over public affairs and controls the actions of public officers on the other. A constitutional government is therefore a government of laws which regulate the conduct of public officials in relation to the citizens and the acts of the government can be justified only with reference to fundamental laws which are supreme in the state. It is, in the last analysis, a national democratic government in which the majority of the adult citizens act through deputies periodically elected and the government is ultimately responsible for its policy and actions to that majority. A government under dictatorship, or under a factious military leader, though it may possess a constitution, should be excluded from the list of a constitutional government.

## SUMMARY

I *Definition* A constitution is a collection of principles, written or unwritten, that regulate the activities of a modern state. A state is unthinkable without a constitution.

II *Classification of Constitutions* They are usually classified into *written* and *unwritten*. A written constitution is generally called an *enacted* constitution which is made up of laws formally enacted by competent authority. An unwritten constitution is usually called an *evolved* constitution which gradually grows out of usages, judicial decisions, etc. This classification is unscientific in view of the fact that no constitution is wholly written or no constitution is wholly unwritten.

III *Merits and Demerits* Written constitutions are clear and definite but not elastic and lack adaptability. Unwritten constitutions are elastic and adaptable but less permanent.

IV. *Rigid and Flexible Constitutions* A flexible constitution is one which can be changed in the same way in which ordinary laws are amended. In a rigid constitution, the process of amendment is quite different from the ordinary law-making process and hence it is not so easy to amend a rigid constitution as it is to amend a flexible one.

V *Merits and Demerits* A flexible constitution can meet the demand of the people by constitutional means and thus it avoids revolutions. But it has little stability. The great merit of a rigid constitution is its stability. But it cannot meet emergencies and this becomes a cause of popular discontent.

VI. *Methods of Amendment* The method of amending a flexible constitution is the same as the ordinary law-making process. But different procedure is adopted in amending a rigid constitution. A rigid constitution may be amended by a referendum of the entire body of citizens as in Switzerland. *Secondly*, it may be amended with the consent of majority of the member states of a Federation as in the U.S.A. *Thirdly*, constitutional amendments may be made by a different organ created whenever necessary. *Fourthly*, the power of amendment may be vested in the ordinary legislature of the land subject to certain special rules of procedure as in France. The Indian constitution before 1947 could be amended only by the British Parliament. Since August 15, 1947, it can be amended by the Indian legislature subject to certain special rules.

VII *Modern tendencies in Constitutions* Every constitution in modern times is the product of (a) usage, (b) judicial interpretation, and (c) formal amendment of the constitution. But the influence of each of these factors is not the same either in degree or in kind everywhere. Gilchrist is of opinion that certain circumstances have, in modern times, favoured the growth of rigid constitutions. They are (a) desire on the part of the people to guarantee their rights, (b) democratic ideas of self-government, (c) certainty and definiteness of rigid constitutions and (d) the rapid advance of federal governments.

VIII *Contents of a Constitution* A constitution is a body of rules that seek to regulate the activities of a state. It generally contains provisions (i) defining the powers of the government, (ii) limiting its powers, (iii) ensuring liberty to the citizens; (iv) prescribing the manner of exercise of that power; (v) prescribing methods of appointment to public services, and (vi) making provision for constitutional amendment.

IX Constitutional Government. It is a government which is administered in accordance with laws which control the actions of public officers. These laws regulating relation between the government and the governed form the basis of constitution.

### QUESTIONS

1. Define constitutions. Classify the different constitutions. (C U 1940)
2. 'The distinction between states with written and those with unwritten constitutions is an illusory basis of division.' Examine this statement. (C U. 1937)
3. "Living political institutions must be Darwinian in structure and in practice." Examine the statement. (C U. Hon 1946)
4. Distinguish between a rigid and a flexible constitution, and describe the merits and demerits of each. Explain how the distinction between the two is one of degree, not of kind. (All 1941, Dac. 1935)
5. What is meant by a constitution of a state? State how constitutional changes can be effected in England, France and the United States. (C U 1932)
6. What are the reasons for the gradual transition from the flexible to the rigid type of constitutions? What are the essential conditions of rigid constitutions?
7. "Constitutions grow and are not made," Criticise this doctrine with reference to the constitution of India. (Gauhati, 1948)
8. Distinguish between a rigid and a flexible constitution. Are the constitutions of (a) U S A, (b) England and (c) India rigid or flexible? Give your reasons. (C U 1947)
9. An American writer has said that the constitution of the U S A is more flexible than the British one. How would you justify his viewpoint? (C. U 1951.)
10. Discuss any two of the following —
  - (a) "History gives us, as it were, the third dimension to Political Science."
  - (b) "The right of self-determination is like a two-edged sword and can be admitted only with reservations."
  - (c) "An unalterable law is a legal impossibility."
  - (d) "Living political constitutions should be Darwinian, in structure and practice."
  - (e) "Law is a removal of natural restrictions, not the addition of more." (C U Hon 1958)



## CHAPTER X

### FORMS OF STATES

*References for Ch X—XII —*

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**Principle of Classification.** It is very difficult to classify states, for, all states are alike in nature. They possess the same essential characteristics, namely, population, territory, government and sovereignty. Though states differ from one another in respect of their size and population, it would be unscientific to classify them on this basis.

Two principles of classification have been suggested: the first on the basis of governmental organisation, and the second, on the basis of the number of persons by whom sovereign power in a state is exercised. Classification of states according to governmental organisation has been criticised on the ground that it is nothing more than a classification of governments and that it ignores sovereignty which is the most essential attribute of the state. Prof Garner is of opinion that the best method of classification of states is to classify them on the basis of location of sovereignty. The earliest writer to classify states on this basis was the Greek philosopher Aristotle.

**Aristotle's Classification.** Aristotle's classification rests *primarily* on two principles. He classified states on a numerical basis, according to the number of persons in whom sovereign power of the state is vested, and *secondly*, on the basis of the end or spirit of the government. He subdivides each of these forms into normal and perverted or deviation forms. The

state, according to Aristotle, is a moral entity and should pursue a moral end, namely, the good of the community. Normal states are those whose aim is to promote general welfare and those states which seek to secure the selfish interest of the rulers without any reference to common good are called perverted forms. Each of these three normal forms has its corresponding perverted forms. Aristotle's classification may be arranged in the following order —

Rule of	Normal form	Perverted form
One	Monarchy	Tyranny
The few	Aristocracy	Oligarchy
The many	Polity	Democracy

The above Aristotelian classification has been criticised on the following grounds —

It is alleged that the classification does not rest on any organic fundamental principle but upon mere numbers. So the classification is mechanical and quantitative whereas it should have been spiritual and qualitative in character. The above criticism is not a well-founded one because Aristotle distinguished between the normal and the perverted forms with due emphasis on the ethical and qualitative test.

In the *second* place, Aristotle's classification is regarded by many as a classification of governments and not of states. His classification has been the cause of much confusion because it does not make any clear-cut distinction between the forms of state and forms of government. But Burgess opines that Monarchy, Aristocracy and Democracy do not represent the rule of one, the few or the many, but the sovereignty of the one, the few or the many. They are therefore distinct types of states and not governments.

*Thirdly*, his classification has been criticised on the ground that it is not exhaustive and as such not applicable to modern types of states. Aristotle was a philosopher of the city-state and therefore he could not anticipate the vastness and complexities of modern states. Hence his classification is out of date and cannot explain the forms like Unitary and Federal, Parliamentary and Presidential. It also leaves out of account

another form of government, viz., Theocracy in which supreme power is believed to be vested in God or in an anointed agent of God. Tibet was an example of theocracy.

*Lastly*, it is very difficult to classify states on the basis of the location of sovereignty. In modern times, sovereignty is scarcely vested in the one or in the few. Again from Aristotle's point of view, Great Britain and Afghanistan may be placed in the same category,—namely, monarchy, although the two states differ fundamentally.

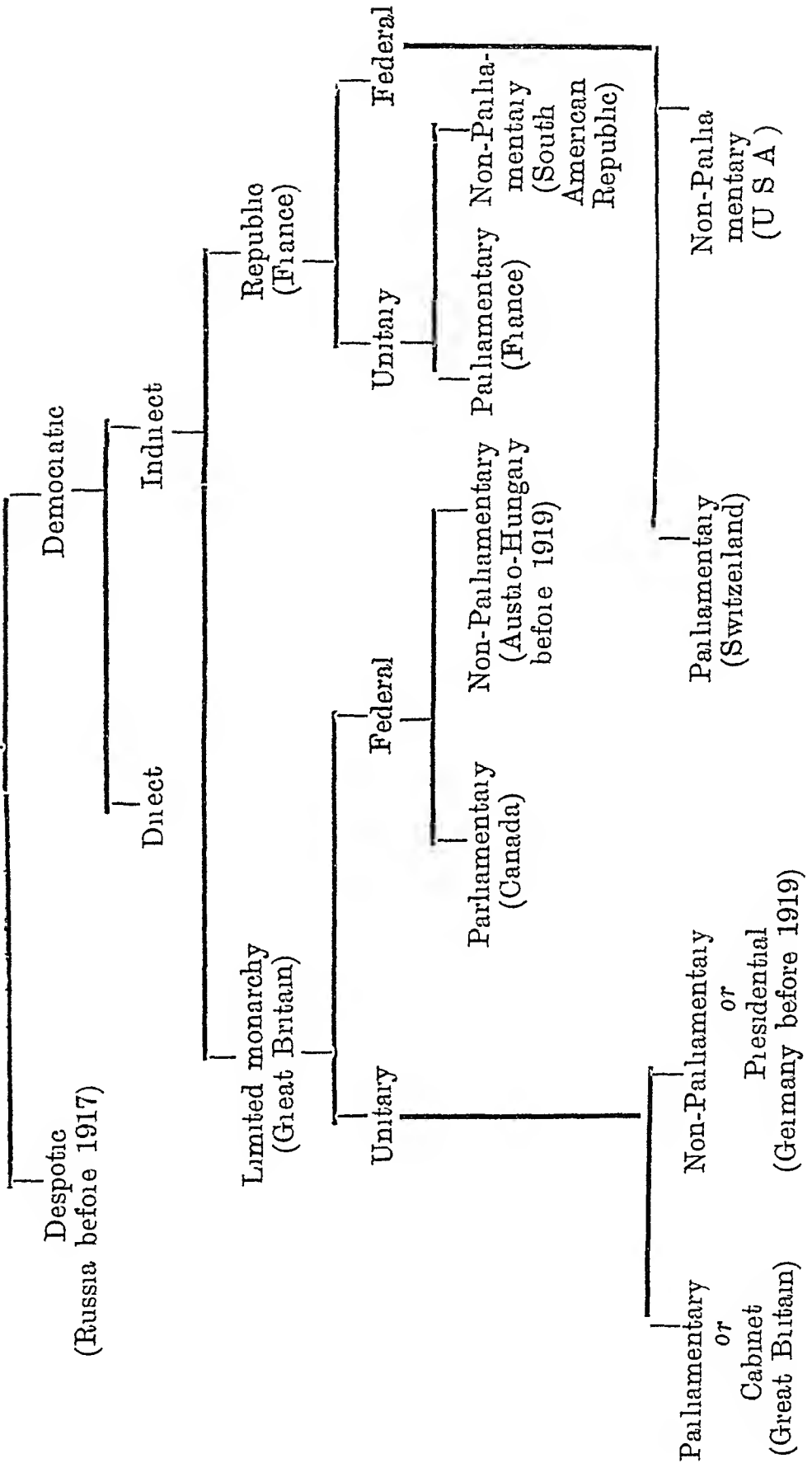
Whatever defects the Aristotelian scheme may have, it is not entirely valueless to us today. Barkar says that we do not distinguish states today on moral grounds because the moral meaning of the state is not so clear to us as it was to Aristotle. Yet the category of end is still employed to classify states, whenever states are classed as war-states, culture-states, law-states or commerce-states. And we distinguish between free countries where the common weal is pursued by the government and the despotically-governed countries where the interests of the ruler predominate in a way somewhat analogous to Aristotle's distinction between constitutional government which rules in an unselfish spirit for the good of its subjects and despotic government which rules in a selfish spirit for the good of the ruler.

**Aristotle's Cycle.** According to Aristotle, governments change in a cyclic order. The first government was in the form of monarchy. Monarchy, in course of time, degenerated into tyranny and the tyrant was overthrown and replaced by few virtuous men. The government thus became an aristocracy. Soon aristocracy degenerated into oligarchy which in its turn was replaced by Polity. Polity turned into Democracy which, according to Aristotle, means mob-rule. Mob-rule cannot last long. People ultimately place themselves under the protection of a competent ruler and thus mob-rule necessitated the reappearance of monarchy. In this way, the cycle repeats in the usual order.

**Other Classifications.** Among the modern classifications, mention may be made of those of Montesquieu, Bluntschli and Marriot, each of whom follows his own method of classification. The commonly-accepted classification is that of Prof. Leacock which is as follows.—

TABLE I

Modern States



Each of the above forms given by Leacock requires explanation. He first divides states into two classes, namely, despotic and democratic. In a despotism, supreme power is vested in one person who rules according to his own caprice without any reference to the will of the people. Despotic states are on their last legs and are fast being placed on democratic footings. A democracy is one where the supreme power is vested in, and exercised by, the general body of the people. Democratic states have been subdivided into Limited Monarchies and Republics. Limited or Constitutional monarchy is a form in which the head of the Executive is the hereditary king who usually holds office for life. But his powers are limited by the constitution. Actual powers belong to the Cabinet or council of ministers responsible to the Legislature. In a republic, the supreme Executive is elected directly or indirectly by the people for a definite period. Each of these two types has again been classified into unitary and federal on the basis of concentration or distribution of powers. A unitary state is one where there is a central supreme authority and that authority is the sole legal sovereign. There may exist local governments in the forms of provinces, countries or departments to which the central government may delegate some of its powers but delegation does not mean division of authority. The central government may withdraw powers from the local governments. A federal state is the outcome of the union of a number of states which by joint agreement create a common organ at the centre to which they surrender some specific rights, retaining to themselves other rights. Thus there are two sets of government in a federation, one at the centre and the other, of the component units. Both of them derive their authority from the constitution drawn up and adopted by all the component states and the constitution determines the jurisdiction of both the sets of government. There is, in every federation, the provision for a supreme Judiciary which acts as the custodian of the constitution by preventing the encroachment of the two sets of government upon each other. Unitary and federal states are further subdivided into Parliamentary and Non-Parliamentary on the basis of the relation between the Executive and the Legislature. The Parliamentary form is otherwise known as the Cabinet or responsible form of government, the Non-

Parliamentary is sometimes called the Presidential or the Congressional government. A Parliamentary form is one where the Executive is controlled by the Legislature. In the Presidential form, the Executive is not a part of the Legislature and is not responsible to it

**Part-Sovereign States.** There are writers who attribute statehood to certain political communities which cannot be regarded as states strictly according to the definition of political science. They are neither internally supreme nor do they possess external sovereignty. They enjoy a semi-independent status and depend upon other states in the matter of foreign relations. There are six kinds of such states —

(1) **Component members of a federal union.** They are not states at all. Sovereignty is an indivisible unit and it resides in the constitution which divides and distributes the political functions of the government between the central and local governments. In a federation, there is one state with a single sovereign authority. The component states are mere administrative divisions and are not recognised as states by other states.

(2) **Vassal States.** A vassal state is one which is generally free from foreign interference in respect of its internal affairs. But it is under the suzerainty of another state in the management of foreign affairs and as such it has limited international capacity. There are at present no examples of Vassal states. Rumania, Bulgaria, etc., were vassal states under the suzerainty of the Ottoman Empire.

(3) **Protectorates or Protected States.** Hall defines a protected state as one which in consequence of its weakness, has placed itself under the protection of another power on defined conditions or has been so placed under an arrangement between powers the interests of which are involved in the disposition." The status of all the protectorates is not the same. They may vary from the status of a colony to the possession of complete control over both internal and external powers. Korea was a protectorate of Japan, the latter exercising absolute control over her internal as well as external affairs. The little republic of Monaco, though theoretically under the protection of France, is virtually independent.

(4) **Mandated States or States under Mandates.** After the conclusion of the First World War, Germany and her allies were deprived of their overseas colonies which were placed under the care of the League of Nations. The League provided for the administration of these former German and Turkish territories by placing them under certain mandatory powers which were to assist them in the task of administration of these territories under the supervision of the League. The mandated states were classified into three groups on the basis of their economic and political advancement and it was decided that as soon as conditions would permit, the mandated states would become free and would be allowed to stand on their own legs. Thus Syria was placed under mandate to France and Palestine and Iraq to Great Britain.

(5) **Self-Governing Dominions.** The British self-governing Dominions may be cited as examples of part-sovereign states. Since the First World War, these self-governing Dominions have attained a status which is as good as independent. They are theoretically under the control of the Mother country, though practically independent.

(6) **Neutralised States.** Certain states on account of their peculiar geographical situation and scantiness of resources and power may voluntarily or for the sake of maintaining balance of power, chose to remain neutral. It implies that the independence and integrity of the state neutralised are guaranteed by the joint action of other states and the state neutralised is required to abstain from waging war except for purposes of self-defence. Example of a neutralised state at present is Switzerland.

(7) **Simple and Composite States.** *A simple or a unitary state* is one which has a single supreme government, exercising authority over the entire citizens. In a unitary state, all powers are centralised in one organ which may delegate some of its powers to local bodies and can revoke them at will. England and France are the best examples of unitary states.

*Composite states* are formed by the union of two or more states. Composite states are generally classified as (a) Personal union, (b) Real union, (c) Confederation and (d) Federation.

(a) *Personal unions* come into existence when two or more states unite together by accepting the same reigning monarch as their sovereign. Thus when the same person is accepted as the ruler by two or more states, a personal union may arise. The operation of the law of succession may also fix the crown of two states upon the same person. It is a temporary union of sovereign states, the king being the only symbol of unity among them. The member states of a personal union retain their supremacy both in internal and external affairs. If a war break out between the members of a personal union, the war is regarded as an international war and not a civil war. The union between England and Scotland from 1603 to 1707 and between England and Hanover from 1714 to 1837 are examples of such union.

(b) *Real unions* occur when two or more states unite together under a common monarch, their identity being merged in that of a common state for external purposes. The member states of a real union retain their separate existence for all internal purposes. They maintain separate laws and institutions, and have distinct organisations for the administration of local affairs. But they differ from personal union in this that they maintain a common organisation for regulating their international relation and promoting certain other matters of common interest. In a real union, therefore, the component states retain internal sovereignty but surrender their external sovereignty and as such it is to be treated as one state with one sovereignty. A war between the members is regarded as a civil war. The best example of a real union is furnished by the Austro-Hungarian union between 1867 and 1919.

(c) *Confederations* A confederation is an association of independent states united together for the purpose of achieving certain particular objects, especially the maintenance of their common external security. The association of states under confederation does not create a new state but the component states only agree to adopt a concerted policy and action in specific matters. They create a common central organisation in which each of them is represented by its own delegate. The states in a confederation do not merge their identity in a common state but retain their full sovereignty with the right to withdraw.



themselves from the union at their sweet will. A confederation is a union which is stronger than a mere alliance of states but it is no more than a band of independent states, rather than a banded state. A confederation has no citizens, no territory of its own other than those of the member states. A confederation is therefore not a state as there is no single sovereignty but as many sovereignties as there are states composing it. If a war break out between two or more of them it is international war and not civil war.

A *confederation* differs from an *alliance* in that the former possesses some sort of a central organ through which the will of the member states are generally expressed but an alliance is merely an agreement between sovereign states for achieving certain common ends. But there is no central organisation of an alliance to compel any of the contracting states to fulfil its obligations. An alliance is therefore the weakest form of union of states.

History abounds in examples of confederations, for, the tendency of neighbouring states from the earliest times to modern days has been to associate themselves together for promoting certain specific objects, especially for organising their common defence. Among the Greeks, confederations were numerous, the more important being the Achaean and the Lycian leagues. During the Middle Ages, mention may be made of the Rhenish Confederation (1254-1350) which had a membership of about seventy independent states. The more important of the confederations during this period was the Hanseatic League (1367-1669) which was originally organised for trading purposes but eventually developed into a great political power with a tremendous influence on the international affairs of Europe. The German Confederation (1815-1867) and the Central America Federation (1907-1918) are the two latest examples of confederations. A confederation represents a passing phase of political development—which reaches its culmination with the formation of either federal unions or unitary states. Germany, Switzerland and the United States of America all bear testimony to the above fact.

(d) *Federations* When a number of states unite together

under a common sovereignty and set up a common central government for the management of certain affairs, or "Where a number of provinces or dependencies are, by a unilateral act of their common superior, transformed into largely autonomous self-governing communities, we have a federal union." The U.S.A., the Dominion of Canada and the Swiss Republic are examples of federal unions. In a federal union, the member states are completely united and merged together into one. They lose their sovereign authority and are bound together by one central government which regulates all external affairs and also matters of common concern which require uniformity of legislation and administration. But each member of the Union has a local government and enjoys full local autonomy free from the control of the central government. In a federation, therefore, there is one state with a single sovereignty and if war break out between two or more of them it is civil war and not international war.

### **Distinction between Federations and Confederations.**

(a) A federation brings into existence altogether a new state, the member states having completely lost their sovereignty by merger, retain only some amount of local autonomy. They cannot withdraw from the union.

In a confederation, the states joining together, retain their sovereignty and are legally free to secede from the union.

(b) In a federation, the political functions of the government in their entirety are divided and distributed between two sets of government, central and local. This division of power constitutes one of the essential features of a federation.

In a confederation, there is no division of powers and no effective central organ to formulate and enforce common laws and regulations over the entire union. All powers belong to the individual states forming the confederation.

(c) A federal union is marked by the supremacy of the constitution which binds both the government at the centre and the local governments. The constitution provides for the establishment of a Federal Judiciary which acts as the

guardian of the constitution and decides disputes between the two sets of government.

A confederation has nothing in the nature of a constitution to bind its members. The absence of a judicial machinery to decide disputes between members makes its position weak and the members can withdraw from the union at will.

(d) A confederation has no citizen to whom the resolutions adopted by the confederation may be issued or from whom obligations or duties may be demanded. Citizens owe allegiance to their respective states.

In a federation, citizens owe a double allegiance, *firstly*, to the central government for federal matters and *secondly*, to the local governments in purely local affairs.

(e) A federation creates a new nation over which the central government has some amount of direct control. It can formulate laws and enforce them against all citizens of the component units directly through its own governmental machinery.

A confederation has no direct control over individuals of member states. The resolutions of a confederation therefore lack the legal character and are inoperative until adopted by the component states and enforced upon their individuals by their respective government.

(f) A confederation is what is known in Germany as a '*Staatenbund*', i.e., a band or league of independent states. There is a plurality of sovereignty, as many in fact as there are states composing it.

A federation is a single state with a single sovereignty. It is a '*Bundestaat*', i.e., a banded state as opposed to a band of states with plurality of sovereignties.

**Theocracy**—Theocracy is a form of government which may be identified with the government called absolute monarchy. In such a form, the head of the state is regarded as the Viceregent of God through whom the will of God is revealed to the people. The ancient Jewish and Egyptian kingdoms were theocracies in this sense. Before the Chinese incursion, Tibet was called a theocratic state because the

supreme power of the state was vested in the Dalai Lama who was believed to be an anointed agent of God. In modern times, the term theocracy is sometimes employed to refer to a state in which religion plays an important part in the affairs of the state. Some of the Muhammadan states of the Middle East are referred to as theocracies inasmuch as their laws have been based on the Holy Koran. With the growth of democratic ideas, theocratic states have almost disappeared.

## SUMMARY

I *Principle of classification*—States may be classified either on (a) the basis of governmental organisation or (b) on the basis of number of persons exercising sovereign authority.

II *Aristotle's classification*—Aristotle's classification is based on two principles (a) number of rulers and (b) end or spirit of the government—

Rule of one—Monarchy—when degenerated is—Tyranny

Rule of the few—Aristocracy—when degenerated is—Oligarchy

Rule of the many—Polity—when degenerated is—Democracy

The main criticism against Aristotelian classification is that it is quantitative rather than qualitative. It is also not applicable to modern states. Barker says that Aristotle's classification is still employed to distinguish good states from bad states. Aristotle also says that the different forms of government change in a cyclic order.

III *Other classifications*—Other writers have also classified states. Of these, Prof Leacock's classification is regarded as the best. He classifies states firstly into despotisms and democracies. Democracies are subdivided into limited monarchies and republics. Each of these two is further subdivided into unitary and federal states. There is a further subdivision of each of the four types of states, viz., states with Parliamentary and states with Non-Parliamentary forms of government.

IV *Part-Sovereign States*—Component states of a federal union, Vassal states, Protectorates, Mandated states are regarded as part-sovereign states. The status of self-governing dominions and neutralised states is now-a-days recognised as almost as good as independent.

V *Simple and Composite states*—A simple or a unitary state is based on the principle of concentration of power in a

single central authority which is supreme in all matters. The central authority may create local governments to which some amount of power may be delegated

A composite state is the outcome of the union of two or more states. There are four different forms of a composite state

(a) *Personal unions*—They are formed by the union of two or more states which maintain their separate statehood in all other respects excepting that they have a common King

(b) *Real unions*—They are formed by the union of two or more states under a common monarch, separate in the administration of internal affairs but united for external purposes

(c) *Confederations*—They are a band of independent states united for the purpose of achieving certain common purposes. Mutual dependence is the only bond of union in a confederation

(d) *Federations*—When several states unite together to form one state with a single sovereignty, a federation comes into existence. The member states enjoy certain amount of local autonomy independent of the control of the central government. A written constitution divides and distributes powers between the two sets of government and a Federal Judiciary acts as the custodian of the constitution

VI *Distinction between Federations and Confederations*—A federation is a banded state with a single sovereignty exercising control over all citizens through its own governmental machinery. A confederation is a band of independent states with plurality of sovereignty and having no direct control over the citizens of the component states.

## QUESTIONS

1 “The difference between a Federation and a Confederation arises wholly from differences in respect of the location of sovereignty in the grouping” Explain this (C U 1947.)

2 Do you agree with the view that Aristotelian classification of states is unsuited to the facts of modern political organisation?

3 How would you classify forms of government? (C U 1952)

4 How would you distinguish a Federal union (a) from a confederation, and from (b) a unitary state. Illustrate your answer (C U 1957)

## CHAPTER XI

### TYPES OF GOVERNMENT

**Principle of Classification.** Like states, governments may also be classified into Monarchy, Aristocracy and Democracy, the principle of classification being the same, viz., the number of persons in whom sovereign authority is vested. But such a classification is unscientific because the form of government in a state is not identical with the form of the state. As for example, a democratic state may have a democratic form of government or it may have a government organised on aristocratic basis. Thus the British government is at once a combination of monarchical, aristocratic and democratic elements. Almost all governments are mixed in their forms.

**Monarchy.** When supreme governing power is vested in a single individual, the form of government is called Monarchical. This is the oldest and the most widely recognised form of government recorded in human history. Monarchy may be either *hereditary* or *elective* or both. The Greek, the Indian and the German Kings were usually hereditary but the Roman Kings were elective. The English monarchy is hereditary but it is elective in the sense that the British Parliament reserves the right to regulate the law of succession at its will. Considered from the standpoint of their character, monarchies may be classified into *absolute* and *limited* or *constitutional monarchies*. An *absolute monarchy* is one in which the monarch is all in all. He alone represents the state and is bound by no will except his own. A clear idea about the nature of absolute monarchy may be formed from the famous declaration of King Louis XIV of France, namely "I am the State". The need for absolute monarchy was felt in early times when it helped build up political organisations and ensured the maintenance of law and order. Monarchy possesses elements of strength, such as, simplicity of organisation, ability to act quickly, unity of counsel, promptness of decision and a certain prestige in the conduct of foreign relations.

But its great demerit lies in the fact that the government is conducted in the interest of the monarch himself without any reference to the will of the people. Under this form, there is

only one patriot and the patriot is the absolute monarch himself. People are not allowed to participate in political affairs and therefore it retards the growth of good citizenship.

*Limited or Constitutional monarchy* This is a form of government in which the power of the monarch is limited by the prescriptions of a written constitution or by conventional principles of an unwritten constitution. The best example is furnished by the British monarchy which is practically a democracy. It is a form in which "the people wills and the King executes." He reigns but does not govern.

**Aristocracy.** When the supreme governing power of the state is exercised by the few, the government is said to be aristocratic. The literal meaning of aristocracy is 'the rule of the best' and as the best are the very few, aristocracy is a government in which only a minority of citizens have a share. Aristocracy may mean either rule by aristocracies of birth or aristocracies of wealth or aristocracies of education and culture. Plato and Aristotle of the ancient world and Lord Bryce of modern times hold that aristocracy is the best form of government in which a small band of highly educated and public-spirited men are placed in charge of government.

The great merit of aristocracy is this. "It emphasises quality rather than quantity, character rather than mere numbers." Aristocracy is based on the claim of the natural rulers to command and so it entrusts powers to those who are best fitted to rule. Moderation is the governing principle of aristocracy and as such it always seeks to pursue a policy of conservatism by curbing the passions of democracy and at the same time holding in check the absolute tendencies in monarchy.

But the great weakness of aristocracy lies in the fact that it is very difficult to choose the best men by whom aristocracy is supposed to be ruled. Birth in high family, possession of wealth or military qualities do not necessarily guarantee good or efficient administration. Aristocracies generally tend to degenerate into oligarchies, a government by a wealthy minority in their own interests characterised by intrigue, selfishness and arrogance of the rulers. Under this form the masses are excluded from a share in public administration and hence they cannot expect justice or sympathetic treatment.

**Aristocratic element in Modern Governments.** If aristocracy mean rule by the numerical minority, all governments are, in a sense, aristocratic in their essential character. Although power was concentrated in the hand of the absolute monarch in the ancient world, yet he had a band of advisers to give him counsel. Thus the essential feature of the governments of the ancient world was the exclusion of the great majority from a share in administration which was actually vested in the few. The overthrow of the feudal system and the introduction of franchise could not altogether change the aristocratic character of the governments because franchise was confined only to a small fraction of the population.

Even modern democracies which are based on universal adult franchise cannot claim to be completely free from aristocratic influences. They are also accused of being aristocratic in their essential character. Two of the most vital powers of a modern government, namely, those of making and enforcing laws—ordinary and financial—still rest in the hands of a very small group of men who are entrusted with ruling authority on the ground of their superior political sagacity and ability. Modern party organisation with its various vote catching devices has enabled this practically self-elected leaders to guide the destiny of the bulk of the people. Fifty per cent of the population of even politically advanced states are for some reason or other without the right to vote, the greater part of the rest are amenable to political propaganda and this being the case, party leaders form the government and run the whole show in the name of democracy. All democratic governments with the sole exception of Switzerland are run by the few with of course slight differences in their outward look. Taking advantage of the ignorance and incompetency of the many, the few rule on the score of their proved superiority over the many. But it must be said that modern democracies though they are aristocracies in disguise, cannot completely ignore the force of the popular will.

**Democratic or Popular Government.** Perhaps, there is no other single word in the literature of political science like Democracy which has given rise to such a wide controversy among political writers. The ideal of democracy is not exclusively a



product of modern civilisation, rather a very ancient ideal, the realisation of which has been the constant objective of mankind in all ages and in all climes. The word *democracy* comes from two Greek words, viz, *demos* and *cratos*, the former meaning the people, the latter power. Democracy therefore means power of the people. Democracy may mean either a form of society or a form of state or a form of government or it may mean all these three together. Democracy as a form of social organisation rests upon the principle of social equality. It pre-supposes the absence of class or caste distinction. A society becomes really democratic when the members of the society are economically equal. A democratic state is one in which the ultimate power of the state rests in the hands of the people. In such a state, every one has a direct voice in the affairs of the state, irrespective of his social position. Democracy, as a form of government, means a government in which the people exercise an indirect control over the government of their country through their representatives. In modern times, democracy implies something more than a mere form of government, a type of state or an order of society. There are thinkers who are emphatically of opinion that the democratic ideal will remain imperfect unless the entire field of economic activities is democratised. True it is that the battle for democracy has been won in the social and political fields but industry still remains to be democratised. So the introduction of Workers' democracy in industry can only transform our society into a completely democratic one. According to Abraham Lincoln, democracy is a government *of the people for the people and by the people*. Modern democratic governments rest on the principle that every honest and self-supporting adult citizen, male or female, is competent to take part in the functions of the government, and in general, he is as much qualified as any other of his fellow-citizens.

Thus it appears that a state may be described as a democracy provided it gives the people opportunity through its various institutions for the exercise of the governing power. It is a type of state in which the voice of the people is, in the last analysis, supreme and in which the people get ample opportunity not only to express their will but also to make it effective. This pre-supposes the existence of some conditions in

society which the state should strive to create and maintain so that each individual gets the fullest opportunity to contribute his best to social good. These conditions are the equal rights of all adults to participate in all the political functions of the state provided the citizens possess the minimum qualification for the due discharge of their duties. Liberty and equality for all and a feeling of fraternity are the indispensable minimum of democracy. Equality is thus the foundation stone of democracy but equality, it should be remembered, does not mean only political equality, it also implies social, economic and legal equality.

**Kinds of Democracy : Pure or Direct Type.** It is a form of government in which the will of the state is expressed directly through the people in a mass meeting rather than through their representatives. It is a sort of an open-air Parliament where the people assemble together for the purpose of electing their public officers, voting the taxes and adopting legislative and administrative regulations. Such a government is practicable only in small states where the number of citizens are small and whose political problems are few and simple. Direct democracy existed in ancient Athens where all the male citizens above the age of twenty used to meet together in their popular assembly known as the Ecclesia. Athenian democracy attained great success because the citizens had excellent political training and ample leisure enabling them to devote to the regular work of the state. The only surviving examples of direct democracy to-day are found in four of the mountain Cantons of Switzerland, namely, Appenzel, Uri, Glarus, Unterwalden. But such a government cannot work in modern states with a much larger population and with diverse problems far more complex than those of the ancient world.

**Indirect or Representative Democracy.** Indirect democracy is so-called because it is a form of government in which the governing power is delegated to a relatively small and select body of persons elected by the rest. The representatives thus elected form the Legislature and supervise the work of the government. John Stuart Mill defines this form of government as one in which "the whole people or some numerous portion of them, exercise the governing power through deputies perio-

dically elected by themselves.' It also attributes the ultimate source of authority to the people but as the people are incapable of exercising in a satisfactory manner that authority directly themselves, they act through the medium of representatives chosen by them. The reason for the emergence of this type of democracy is that it is not possible for the countless voters in a modern state to meet frequently in an assembly to decide upon questions of policy. Besides, the average citizen has neither the time nor the training to attend to public business of a highly complex character.

**Elements of strength of Democratic Government.** Democracy is regarded as the best form of government. The reasons are not far to seek. *Firstly*, the efficiency of any form of government lies in its sense of responsibility. Democratic government is superior to all other types because it is the only form in which the responsibility of those who exercise public authority can be adequately enforced to those in whose interest they are chosen to govern. More than any other system of government, a democracy is likely to insure a greater degree of efficiency by the methods of popular election, popular control and popular responsibility.

*Secondly*, as has been pointed out by Mill that this form affords ample opportunity to the citizens to stand up for their rights and therefore the rights and interests of the people are better safeguarded.

*Thirdly*, the sum-total of social welfare is the greatest in this form because all citizens, in proportion to the amount and variety of their personal energies, direct their individual efforts to promote general prosperity.

*Fourthly*, it makes no distinction between man and man and places every one on a footing of political equality. The fear of domination by one particular section over the other is minimised.

*Fifthly*, it allows every one a share in administration, an opportunity for participating in public affairs. This promotes his patriotic feeling and elevates his character. Thus it ensures the awakening of political consciousness in the masses.

But the greatest glory of democracy in the opinion of

Lord Bryce, is that "the manhood of the individual is dignified by his political enfranchisement and that he is usually raised to a higher level by the sense of duty which it throws upon him. It is a form of government which rests on the consent of the governed and upon the principle of equality and as such it is more immune from revolutionary disturbances than any other form. It also serves as a sort of training school for citizenship.

**Elements of weakness of Democracy.** In evaluating the strength of democratic government, we must not be blind to the obvious defects which experience has shown it to possess. Aristotle characterised it as a perverted form of constitutional government. In more recent times, no less a person than H. G. Wells refers to it as a government which can be "knocked to pieces in five minutes." While we do not share the views of those critics who have grossly exaggerated the defects of democracy, we admit that democracy is not without its defects.

In the *first* place, democracy suffers from a serious defect, namely, that it attaches more importance to quantity than to quality. It fails to give due consideration to worth and special fitness. Government, being a high public duty, should be entrusted only to those who are best fitted for the task by their capacity and training. But in a democracy, all have equal voice in the affairs of the state with the result that it tends to degenerate into mob-rule.

*Secondly*, democracy upholds the despotism of the majority over the minority, the majority being constituted by the most incompetent and the most ignorant. Such a rule can ensure neither better government nor greater liberty.

*Thirdly*, it is said that democracy recognises no privileged class and puts everyone on a footing of equality. But actually the administration is carried on by few manipulators who manage to secure votes of the ignorant masses. These unscrupulous manipulators are guided more by motives of self-interest than by public good.

*Fourthly*, it produces a tendency of class legislation. The dominant class, under this form, captures political power for promoting their own interests at the expense of national interest.

*Fifthly*, Leckey, Maine and others have criticised democracy on the ground that it is unfavourable to the development of higher forms of intellectual life, such as literature, art and science. As it is the government by the ignorant masses, it is incapable of appreciating character and intelligence.

*Sixthly*, experience shows that it is a form of government characterised by fragility. It implies short tenure of office, rotation in office and in many cases honorary service. Therefore this government is quite unfit to secure stability and continuity in government policy.

**Modified Direct Democracy.** At the present time, people in many countries have lost their confidence in the efficiency of the representative form of government and consequently there is a growing distrust in it. The defects in the actual working of the representative system coupled with the growing political consciousness of the masses have made them cautious and have induced them to extend their authority over the field of legislation by means of certain direct methods known as the Referendum, Initiative, Plebiscite and Recall. In Switzerland, in Ireland and in some other states, the principle of direct democracy has been engrafted, to some extent, on representative government. Thus the difficulties and evils of parliamentary government by parties have been to some extent mitigated by the direct action of the people.

(a) *Referendum* The word literally means 'must be referred'. It is a method by which legislative proposals or constitutional questions are submitted to the popular vote for reconsideration after they have been passed by the legislature. If they are ratified by the required majority, they become valid. Referendum may be *optional*, *compulsory* or *financial*. It is compulsory when it is provided by law that every bill passed by the legislature must be submitted to popular vote for its approval by the people. It is optional when a bill passed by the legislature will have to be submitted to popular vote provided a required number of voters demand it. In respect of constitutional laws in Switzerland, referendum is compulsory, in respect of ordinary laws, it is optional.

(b) *Initiative* The initiative is a method which affords an opportunity to the Electorate to make independent proposals

for legislation. If a certain number of voters so desire, they may, by petition, ask the Legislature to introduce certain types of law. The initiative is used in the Swiss Federation in respect of constitutional laws only in two forms, the *formulated* and the *unformulated*. If 50,000 citizens demand a certain amendment and their demand is made in the form of a bill complete in all details, it is called formulated initiative. If, on the other hand, the popular demand is of a general nature couched in general terms and not complete in all details, it is called unformulated initiative.

(c) *Plebiscite*. It provides for the submission of certain questions of great public importance and of highly controversial character to the votes of the people. The verdict of the people thus expressed may not be binding upon the government but it helps the government to shape its future policy.

(d) *Recall*. The system of recall provides for compelling an elected officer either to resign or to submit to re-election. Thus elected officers are made responsible to those by whom they are elected.

Of the methods of direct democracy mentioned above, the referendum and the initiative are perhaps the most remarkable among all democratic institutions, for they embody the principle of popular sovereignty by providing channels of direct action by the people. The classical home of the Initiative and the Referendum is Switzerland where they have been used for a long time and from here they have spread to other countries. The two institutions supplement each other: the intent of the initiative is positive while that of the referendum is negative. The former demands the enactment of laws which the legislature may ignore or refuse to pass while the latter provides a popular veto upon laws which the legislature seeks to impose upon the people against their will. Both the initiative and the referendum may be used in their compulsory or optional forms and they may be used as compulsory in some cases while optional in others. In some countries, they are applied in their compulsory forms to constitutional laws only in others, to ordinary laws as well.

*Merits*. These methods of direct democracy as applied to representative government serve some useful purposes. They

induce the people to take increasing interests in political affairs and make them conscious of their rights and duties. Moreover, they prevent legislative tyranny of the legal sovereign and check party factions and sectional legislation.

*Demerits.* But these methods are not without their defects. The voters are neither anxious nor do they possess sufficient knowledge to understand either the technicalities of law or the intricacies of a political problem. Besides, popular legislation does not always lead to the enactment of good laws. These methods will tend to make the legislature irresponsible by shifting responsibility from it to the electorate. These methods may be practicable in small countries like Switzerland but not quite so in big countries like the USA or the USSR.

**Essential conditions of successful Democracy.** Democratic government requires for its success certain conditions in the absence of which, it is destined to perish. Even the worst critics of this form have admitted that democracy may succeed if the 'turbulence' of democracy is restrained and made as 'calm as water in a reservoir'. The most fundamental condition essential to its successful working is therefore that "the people who work it shall possess a high degree of political intelligence, an abiding interest in public affairs, a keen sense of public responsibility and a readiness to accept and abide by the decisions of the majority." *Secondly*, the people must zealously guard their rights and stand up to fight for their preservation. In the absence of a determination on the part of the people, power is likely to slip into the hands of a small body of men, thus giving rise to oligarchies or dictatorships. *Thirdly*, the success of democratic government depends to a great extent on the straight-forward supply of news. If the citizens are ignorant or misinformed, they cannot possibly make correct decisions on matters of public interest. The *fourth* condition is that the citizens should receive a certain standard of education which will enable them to contribute their instructed judgment to common good. The duty of the state is, therefore, to provide free and compulsory education to its citizens. Lastly, it is highly desirable that there should be a general agreement among the citizens regarding the fundamental issue. No government can carry on with its work successfully if there

are differences between different groups. Thus the success of democratic government depends, in the last analysis, on the character and capacity of the people who work it.

But the conditions enumerated above do not certainly exhaust the list. As has been emphatically asserted by Prof Laski, political democracy without its economic counterpart is meaningless. People can stand up for their rights only when they are free not only politically but also economically. This economic freedom implies the right to be employed, the right to reasonable wage and reasonable hours of work with provision for leisure, recreation and rest and lastly, a reasonable share in determining the conditions of work. Without these conditions, citizens even if armed with political rights will be reduced to the position of slaves.

**Democracy and Dictatorship.** History abounds in examples of powerful men rising into prominence and dictating the course to be followed by the people. Dictatorship is therefore no new thing in modern history. Modern dictatorship came as a natural and inevitable concomitant of the war of 1914-18. The post-war governments of many countries were confronted with numerous problems which they failed to solve to the entire satisfaction of their people. The new states that were created on the principle of 'self-determination' of nations were not helpful to the growth of democracy, on account of their lack of political training, want of adequate financial and economic strength and absence of mutual trust and goodwill among the various racial groups that still existed side by side. To these were added economic and social causes which made the situation quite unsafe for democracy. The people groaned under the heavy burden of taxation and the spectre of unemployment appeared everywhere in view. The working classes became restless. The need for a strong government was felt everywhere to cope with the situation. But unfortunately, the divergence of views among the political leaders stood in the way of forming a strong government. The Communist experiment in Russia which attained a remarkable success under the able leadership of Lenin and Stalin captured the imagination of the people of Europe. The Communist dictatorship in the Union of the Soviet Socialist Republics came to be known as



the 'dictatorship of the proletariat' as opposed to the 'dictatorship of capitalist class'. It had a lofty aim in this that it wanted to do away with the distinction between the 'haves' and the 'have-nots' and thus to usher in a new order of society where there would be no class exploiting for their own interest any other class, and where every socially useful worker would get adequate opportunity for self-development. The Russian dictatorship, on its practical side, showed remarkable vigour and efficiency particularly in raising the masses to a higher level of prosperity. The firmness and determination of the dictator got the upper hand over the slow and cautious policies of democracy. A good despot came to be regarded as the saviour of the people out of the miseries and stagnation of the post-war chaos. Thus quickly following the Russian Revolution dictators began to appear on the European scene in rapid succession. Italy under Mussolini, Poland under Marshall Pilsudski, Yugoslavia under King Alexander, Turkey under Kamal Ataturk, Germany under Hitler and several others in Europe, South America and even in Asia, one by one, went over to dictatorship. The course of events seemed to prove that democracy was not only on the defensive but it was on its last legs, gasping for breath.

Dictatorship may be of three different kinds, namely, military, communist and fascist. Military dictatorship though a very ancient form of government has not altogether disappeared even now-a-days. A military dictatorship comes into existence when an army-general captures political power by the force of arms and also rules by the force of arms. Administration of France by Napoleon, of Spain by General Franco and in very recent years rule of Pakistan by Field-Marshal Muhammad Ayub Khan are cases in point.

The aim of the Communist dictatorship in Russia is to establish a classless society and to provide equal opportunities for all. With this end in view, communist dictatorship in Russia claims that it has replaced the dictatorship of the Capitalist by that of the Proletariat.

Fascist dictatorship believes in 'one nation, one state and one leader'.

Dictatorship is a form of government in which the whole

power of the state is concentrated in the hands of one man. A dictator is generally supported by a party and all other parties are crushed by force. The dictator seeks to glorify the state by subordinating the individual to the state. In such a state, criticism of the government is not tolerated and for this purpose, the press, the radio, the educational institutions are all controlled by the state. The conception of the state has undergone important change in the hands of the dictators. The state is regarded as the highest and the best form of human organisation and as such it is absolute and omniscient. National unity is regarded as the fundamental basis of the state and with this ideal in view, all other groups are ruthlessly exterminated. The whole nation is taught to think and move in one way. The states under dictatorship, specially of the Fascist type, are imperialistic in their outlook and constantly seek expansion of their territory and hanker after power and predominance. The result is that the states preach militarism and are perpetually prepared for war. The basic principle of dictatorship is 'one state, one people, one leader'. Hence they are called *totalitarian states*, the authority of the state being absolute over every aspect of a citizen's life.

The attitude of the dictators is marked by an absolute indifference and contempt for the democratic ideal. Individual liberty is an accepted dogma in modern democracy which regards preservation of the rights of man as its fundamental object. But in the totalitarian states, there are no human rights but only state rights. Democracy follows the ideal, "Live and let live." The different parties are allowed to exist and they are given a certain amount of freedom of opinion and organization. Democracy looks upon the state as a means for promoting social welfare, but dictatorship regards the state as an end in itself. The dictator considers himself infallible, he alone having the monopoly of all wisdom. Democratic governments admit their omissions and commissions and try to rectify them. But dictatorship breeds self-complacency and an exaggerated notion of its own powers. Thus the blunder of a dictator brings ruin not only upon himself but spells disaster to the whole nation. Nazi Germany under Hitler and Fascist Italy under Mussolini bear testimony to the fact

But dictatorship is not to be regarded as an unmixed evil. Dictatorship is welcomed by the people in times of emergency, especially in war. The progress made by democracies pales into insignificance before the achievements of the U.S.S.R. within a brief span of twenty-five years and Hitlerite Germany in ten years. This shows that dictators are men of super-human ability. But Dictatorship can never be a desirable substitute for democracy simply on the ground that it is based solely on the cult of force without the sanction of law. It is dangerous to entrust so much power to one single individual, however capable and resourceful he might be.

**Future of Democracy.** The ultra-democratic devices adopted by some states and the emergence of dictatorship during the period after the First World War certainly go to discredit the democratic ideal to some extent. There is no denying the fact that for the time being, there was a set-back in the democratic ideal, but on that account we must not think that democracy has altogether failed and that the ideal should be abandoned. The introduction of ultra-democratic devices like the referendum, initiative, etc. far from discrediting the democratic ideal, proves that governments which were so long aristocratic or oligarchic or dictatorial in essence are gradually coming over to democracy. They therefore mark the triumph of the democratic ideal. Dictatorship is a temporary phase and the verdict of history is that nowhere has it been able to stand the test of time. Even dictatorships, in the last analysis, rest on democratic principles. The success of the Communist dictatorship in Russia depends, in no small measure, on the realisation in actual practice of the democratic ideals of society. The fact that the democratic ideal is far from being achieved does not prove that it has failed but it only proves that the ideal is harder of realisation. Democracy makes great demands on its citizens and, whenever the citizens fail to come up to its ideals, there may be temporary set-backs. So long as a better substitute of democracy is not devised, so long as people believe in the dictum that 'good government is no substitute for self-government', the democratic ideal is sure to dominate every sphere of man's life. Men once having tested power will not turn away from

democracy. We may conclude with Bryce that "popular government will flourish and decline in proportion to the moral and intellectual progress of man" It is the only ideal that can save the structure of our civilization from the onslaughts of reactionary forces.

### **Distinction between Ancient and Modern Democracies.**

1. Ancient democracies were direct in form in which all citizens had a share in the government while modern democracies are indirect or representative.

2 The size of the ancient states was very small and the number of citizens consequently also small The necessity for enabling every citizen to participate in the affairs of the state reduced the size of the state to a city Modern states are big territorial states, having no bar to its expansion

3. Citizenship, in the ancient state, was confined to a small leisured class; the slaves, women and others being excluded from the category of citizens. It was in effect a modified aristocracy in relation to the total population of the state The modern state has no such exacting conception of citizenship. It excludes none excepting the alien

4. The ancient state was regarded as an end in itself, the citizens in ancient states lived for the state, whereas the citizens of a modern state live for themselves, and the state is regarded as a means for furthering their common welfare.

5. No distinction was made between the state and government in ancient democracies, but in modern times, a clear-cut distinction exists between the two. The state is a sovereign body while government enjoys delegated authority and as such its powers are limited.

6 The status of the individual citizen has considerably improved in modern times His rights are recognised by the modern states, but the ancient states did not recognise personal rights

### **SUMMARY**

I *Principle of classification* Governments are also classified into Monarchy, Aristocracy and Democracy, the principle of classification being the same as that of states



working of these methods requires a high degree of intelligence and political sagacity in the people. They are impossible in big states.

X *Conditions essential to the Success of Democracy* In order that it may work smoothly without any hindrance, democracy requires that the citizens should be honest and intelligent. They must receive an education which will develop in them a sense of responsibility. They must also be economically independent.

XI *Democracy and Dictatorship* Modern dictatorship grew out of the ruins of World War No I. It came by way of protest against the incompetency and injustice of the post-war democracies. The Communist dictatorship in Russia came to be a model to imitate, though in a modified form. Dictatorship in its extreme form appeared in Germany and in Italy. The characteristic common to all dictatorship is that all powers are concentrated in the hands of the leader of the single political party which ruthlessly suppresses all other parties. The state personified in the dictator dominates all the aspects of a citizen's life. Dictatorship breeds imperialism. Dictators are generally strong men of great constructive ability. The fall of the dictator spells disaster to the people.

XII *Future of Democracy* Democracy has a bright future inasmuch as it is the only form of government in which the citizens can feel secure and can reach their best selves. Its success depends on the character and attainments of those who work it. It will succeed with the gradual moral and intellectual progress of mankind.

XIII *Ancient and Modern Democracies* Ancient democracies were direct, modern democracies are indirect. Ancient states were small city-states which recognised the rights of only a leisured and capable class called citizens. Modern states are big territorial states which recognise the rights of all. The state, in ancient times, was regarded as an end in itself, whereas the modern state is regarded as a means for furthering the welfare of man.

## QUESTIONS

1 Estimate the strength and weakness of modern democracy as a form of government. (C U 1943, 1949)

2 Discuss the aims and ideals of totalitarian states. How far do those ideals differ from those of democratic states?

(C U 1944)



## CHAPTER XII

### TYPES OF MODERN GOVERNMENTS

**Unitary and Federal Governments.** In a unitary government the powers of the government are concentrated in the central government which is supreme. There may be local governments but they derive their powers from the central government and are subordinate to it in all respects. In a federal government, both the central and local governments derive their powers from the constitution. Thus in a unitary government, there is no constitutional division of powers but only delegation of authority by the central to the local governments, but in a federal government, there is a constitutional division of powers between the national government at the centre and the governments of local units. *Secondly*, in a unitary government, it is the central government that is supreme, in a federal government it is the constitution that is supreme. The local governments in the unitary type are mere convenient administrative units but in the federal, they are constituent members of the federal government with almost co-equal powers. *Thirdly*, the units in a federation enjoy *original* and not *derived* powers but in the unitary government, the units enjoy derived powers which unlike the federal government are not the gift of the constitution but only the grant of the central government. *Fourthly*, a unitary government may have a written or unwritten constitution which may be rigid or flexible but a federal government must have a written constitution which is generally rigid in character. *Lastly*, the most important characteristic of a federal government is the supremacy of the judiciary which acts as the arbiter of disputes between the component units and the federation and between the units themselves and also as an interpreter of the constitution. The federal judiciary can declare the acts of various governments null and void when they are inconsistent with the constitution, but the judiciary in the unitary type is very seldom vested with the power of declaring laws null and void.

**Federal Governments—Two broad types.** A federation is the outcome of an agreement between a number of states,



previously independent. The states thus united together create a common Central Government for the administration of certain common affairs, while retain to themselves autonomy of action in other matters. A second type of federation may also be formed by the splitting up of a unitary state into a number of provinces and by granting autonomy to them. In the first case, federation comes into existence by the process of centralisation and in the second case, the process involved is known as decentralisation. The United States of America came into existence as a result of the union of a number of autonomous states which chose to surrender, for their common benefit, some of their powers to a newly created government at the centre, but the bulk of the powers were retained by them. To the newly created government at the centre, the constitution transferred strictly limited powers. In other words, in the American type of federation, residuary powers, i.e., powers not delegated by the constitution to the central government, were left in the hands of the governments of the component units. The competence of the central government is positively determined by the constitution, while that of the local governments is negatively determined.

The federation in Canada represents another type which was formed by the process of decentralisation. The unitary government was broken up into a number of autonomous units to which the constitution transferred limited powers. The bulk of the powers were left with the government at the centre. Thus in the Canadian type of federation, residuary powers rest with the government at the centre. The local governments are authorities of enumerated powers, while the central government is one of both delegated and reserved powers. Thus "federation as a principle of governmental organisation is an effective contrivance whether used for the purpose of tightening or for the purpose of loosening a pre-existing bond". But the modern tendency in all federations is that they are, through the process of centralisation, drifting towards the unitary type. The tendency is present in the federation of the USA; it is more prominent in the union of the Soviet Socialist Republics and the German Federation under the Weimar constitution was so organised that the states were

practically reduced to the position of local governments under a unitary state. In the New Constitution of India which has come into force from the 26th of January, 1950, the centrepetal tendency militates against the spirit of federalism. Apart from the 97 items on the Union List which take away the cream of power to the centre, there is a Concurrent List, but in case of conflict, the Union's jurisdiction becomes valid to the exclusion of the states

### **Distinguishing marks of a Federal Union.**

A federal government, according to Dr. Finer, may be distinguished from a confederate or a unitary government by the following characteristics, namely, the co-existence of two governments, division and distribution of legislative and administrative powers, supremacy of the constitution, special position of the judiciary, separate allocation of revenues and finally a special theory of allegiance and secession.

(a) *Co-existence of two governments* In a federal government, there are two sets of government. The government of the whole territory called the national or the central government exists side by side with the governments of each local area into which the whole territory is split up. Both these sets of government,—central and provincial or local derive their powers from the same source, namely, the constitution and each of the two governments is free from the control of the other. It is necessary here to point out that the local governments of a unitary state do not enjoy any such supremacy because in the unitary type, there is one recognised government, viz, central government and the authority of the central government is supreme in all matters concerning the state.

(b) *Division and distribution of powers* In a federal government, the totality of the governmental powers is divided and distributed by the national constitution or an organic act of Parliament creating it, between a central government and the governments of the individual states or other territorial sub-divisions of which the federation is composed. Generally, matters of common concern which require uniformity of legislation and administration, such as, Defence, Foreign affairs,

Currency, Railways, Post and Telegraph, etc., are under the central government. The local governments are given all powers affecting local interests like agriculture, education, medical relief, etc. In short, there is one government for national affairs and a number of local governments for local affairs. 'A federal government therefore resembles a unitary government so far as national affairs are concerned, while in respect to local affairs, it is more like a confederate government' Besides, there is a clear-cut division of powers between the executive, legislative and judicial departments. Thus a federal government implies both territorial and functional distribution of powers.

The most important thing to be noted in connection with the division of powers in a federation is that powers and functions of a modern government can never be clearly and precisely listed and distributed between the national and local governments for all times to come. Spheres of activity of every government are increasing and hence every new addition to governmental power gives rise to the question of distribution of that power. In order to make provision for such future contingencies, all federal constitutions make provision for the assignment of such unenumerated powers either to the central government or to the state governments. These unenumerated powers are called *residuary powers*. In states having a strong centrifugal tendency, as in the U.S.A., residuary powers are vested in the state governments, but in states like Canada and India, where the centripetal force is stronger, residuary powers are vested in the central government.

Again some federations have made a three-fold classification of governmental functions instead of two. In addition to the usual classification of functions into *National* and *State*, a third list of functions is made in the constitution, called the *Concurrent List*. Both the national and local governments are empowered by the constitution to exercise their legislative and administrative authority over the concurrent list, subject to the condition that in case of a conflict between the two governments with regard to the exercise of concurrent powers, federal laws will prevail over state laws. The new constitution of India has adopted this principle.

The rigid specification of powers by the federal constitution has been modified to a great extent by the adoption of the *Doctrine of Implied Powers* by the U.S.A. Supreme Court. In the U.S.A., powers of the national government are indeed very limited. But the Supreme Court of the U.S.A. by liberally interpreting the constitutional laws has helped to confer more powers on the Congress which, though not specifically assigned to the Congress, yet are, according to judicial interpretation, latent in some other provisions of law. Thus judicial interpretation has been of immense help in all federations in the matter of further specification of powers not provided for in the constitution.

(c) *Supremacy of the Constitution which is generally Written and Rigid.* A federal government, as has already been pointed out, is the outcome of an agreement entered into by a number of parties. The terms of the agreement are formally embodied in a document which is known as the constitution. The constitution is the source of powers of both central and local governments. It defines the powers of the state and distributes them to different bodies. Constitution is the supreme law of the land. Any law, passed either by the federal legislature or by any of the states, will be invalid if it violates any of the provisions of the constitution.

The constitution should be both written and rigid. Unless it is written, disputes may arise in future between two governments regarding their jurisdiction. Only a written constitution can define the spheres of action of the two sets of government. The constitution should also be rigid in character so that neither of the governments may enlarge or redistribute the powers of government differently in a way in which they already have been distributed by the constitution. If it is to be altered, it can be done only by the sovereign itself and not by any unilateral act.

(d) *The existence of an independent and impartial Judiciary.* The supremacy of the constitution must be preserved in the interest of the stability of federal government and this is secured by the creation of a Federal Court which is an integral part of the constitution and as such stands on an

equal footing with the federal executive and legislature. The federal court acts as the custodian of the constitution, which interprets its laws in case of doubt and ambiguity. It decides disputes arising out of the acts of the central or of the local legislatures. It is vested with the power of declaring any law, national or local, invalid which is at variance with the articles of the constitution. The federal judiciary is also the authority to expand the constitution by interpreting its implications. In short, it is the federal judiciary which helps to give stability to the federal constitution by enforcing conditions of agreement upon the national and local governments.

(e) *Double citizenship* A citizen in a federal state owes a double allegiance—a direct allegiance to the national government in respect to matters which are the concern of that government and also an indirect allegiance to the state in which he resides in respect to matters which are the concern of the state. A citizen therefore lives under two sets of laws—national laws and laws of the state to which he belongs. But in India, there is one citizenship, namely, Indian citizenship.

(f) *Separate allocation of revenues* The federal constitution must make provision for special revenue system. Just as powers and functions are divided and distributed, similarly provision should be made for dividing resources between the national and local governments in accordance with a definite scheme. This special revenue arrangement is necessary to enable the governments of the component states to carry on their administration, independent of the control of the central government as defined by the written constitution.

(g) *Allegiance and Secession* A question may be asked as to whether the member states of a federation have the right to secede from the union in which they have voluntarily entered for certain advantages. A federation whether formed by the way of integration of independent states or by the way of disintegration of a big state is based upon the greatest common agreement for the greatest common good of the member states which give birth to a new state with a new national consciousness. If the union is to serve the purpose for which it is brought into existence by the greatest common agreement, the right to secede on the part of any of the contracting units

seems to be incompatible with the ideal for which a federation stands. The inviolability of the federal union was firmly established both in the U.S.A. and in Switzerland by refusing to recognise the right of secession to the recalcitrant states. In both the countries, the recalcitrant units were coerced to remain within the union. So it is now recognised as a universal principle that member states of a federal union are integral parts of the union and as such have no right to withdraw from the union.

The U.S.S.R. constitution is, however, an exception to this universally recognised principle. The constitution of the U.S.S.R. recognises the right of secession on the part of the member republics. It is pointed out that as the union of the Soviet Socialist Republics is a voluntary association of states, it is only in conformity with true democratic principle that the states should not be coerced to remain within the union against their will. They are at liberty to withdraw from the union with the same freedom with which they enter into it.

**Conditions Essential to the formation and success of a Federation**—"A Federal state", remarks Dicey, "is a political contrivance intended to reconcile national unity and power with the maintenance of state rights." The desire for unity may be fed by what is known as *Geographical Contiguity*. It is very difficult to attain national unity where the people live widely apart from one another. The membership of a federal government implies that citizens should take an active part in common affairs which are usually administered by the central government. A federal government, it should be remembered, is a system composed of the central and local governments combined. The local governments are as much parts of the federal system as the central government is. If the citizens live in different territories, separated by long distance, they cannot be expected to participate in matters of common interest. Distance creates callousness. Besides, there is the difficulty of locating the seat of the central government. The units of the (British) Commonwealth of Nations cannot be organised into a federation for lack of geographical contiguity.

The second essential condition favourable to the formation of a federal union is the *community of race, language,*

*religion, culture, interests and historical association.* These are the essential bonds of nationality. This feeling of nationality fed by geographical contiguity and a need for common defence creates a desire for union among men connected by locality, history, race or common economic interests.

The third essential condition is a *sentiment of unity* arising out of the second. People must earnestly desire such union among themselves without surrendering their local rights. Hence federalism implies provincial autonomy which enables the component units to preserve that much of local autonomy which is not detrimental to national unity.

The fourth essential condition is that there should be *equality* among the units, both between themselves and in relation to outside powers. States, large or small, must have equal rights and privileges in the affairs of the central government. This equality is secured by giving equal or proportionate representation to the states on the federal organs. The absence of political equality stirs up local jealousy and makes it possible for big states to dominate the rest. The so-called German federation before the First World War was a type which was notorious for its glaring inequality among the component states. Prussia, being the largest of the Germanic states, enjoyed special rights and privileges and in course of time began to exercise dictatorial power. The German federation could not stand the test of time as it was essentially 'a compromise between a lion, half a dozen of foxes and a score of mice'. Prussia was the lion.

The last essential condition is the *political ability* of the people. The federal government requires for its success a basis of political competence and general education among the people. A high degree of general intelligence is necessary among the people in order that they may properly discharge their duties to the national and local governments.

**How far do these conditions exist in India?** The Indian union, as reconstituted by the States Reorganisation Act, 1956, and subsequent amendment consists of fifteen states of equal status and eight centrally-administered territories. The first essential condition for the success of a federal government is geographical contiguity and with the sole exception of the

tiny islands of the Andaman and Nicobar, Laccadive and Amindivi in the Arabian Sea all other parts of the Indian union are contiguous territories making it easier for the people of the different parts of the country to come frequently in contact with one another. Frequent contact and interchange of ideas and ideals promote the feeling of national unity. This geographical contiguity has also helped India to organise her defence more effectively against foreign aggression.

A second condition favouring the formation of a federal union is the presence of community of race, language, religion, interest and historical tradition which cement the bond of union between the different parts of a federation. So far as India is concerned, identity of race, language and religion, to be frank, does not exist. The people of India represent heterogeneous racial elements, speak different dialects and profess a variety of religious faiths prominent among which is Hinduism, Buddhism, Islam and Christianity. These religious and linguistic differences often strike a discordant note in the political life of the country. The different racial elements speaking different languages and professing different faiths live so inter-mixed with one another that any attempt to reorganise the different states of the Indian union on linguistic or religious basis is bound to fail.

In spite of these diversities, there is the redeeming feature that the different communities had for centuries lived on the common land, observed many common customs and developed some common traits of character. The New Constitution of India has also helped the growth of a vigorous nationhood in India by enforcing one citizenship for the country and also by throwing open equal opportunities for all citizens irrespective of caste, colour, creed or place of residence. So the possibility of the formation of a United Indian Federation is not a dim and distant one. If the peoples of Switzerland, home of diversities, can form a federation, there is no reason why we should be so sceptical about India on the score of her diversities.

A federation creates a new state and a new nation and it is therefore absolutely necessary that the federating units should be bound together by a common sentiment of unity. In India, this federal sentiment, though weak still exists and it is gradu-



ally growing stronger. The different units are gradually realising the truth that none of them is self-sufficient and that in union lies their strength. The creation of zonal councils in 1956 to settle all problems arising out of inter-state relation and frequent meetings and conferences of the heads of states under the aegis of the Union Government have not only counteracted the separatist tendencies to a great extent but have also cemented the bond of national union. The rehabilitation of refugees from East Pakistan in the different states,—even in the distant Andamans goes to prove that the rehabilitation of refugees is considered as an all-India problem.

It is again necessary that there should be equality or at least proportionate equality among the units forming a federation. If some states are bigger in size, population and resources and command greater influence by reason of their superior position, the smaller states will have little share in common affairs. Federalism implies the idea of equal partnership among the units and any deviation from this principle is likely to create suspicion and want of confidence in the weaker units. In the U.S.A., and Canada, political equality has been secured by giving equal representation to all the component states in the upper chamber. In India, the disparity between the states in size, population and resources are so prominent that exact equality has not been possible. The Indian states have been given full equality of status but only proportionate equality of representation on population basis.

The last essential condition is the political ability of the people. A federal government is a complex organisation which demands of its citizens a high level of general intelligence in order that the citizens may properly discharge their duties to the national and local governments. Besides, the federating units, equal partners as they are in all affairs, must be equally politically advanced, otherwise, the complex mechanism of government would prove to be too difficult to be worked out by a people who are lacking in political training and competence. In India, during the initial stage of the working of the federal government, considerable difficulty arose due to the retirement of the bulk of the foreign civil and military servicemen from Indian civil and military services. In some of the states, offices

had to be manned by recruitment from outside and not infrequently by appointing foreigners to posts of responsibility and trust. The difficulty is now almost over. The Army, Navy and Air Services have now been completely Indianised and the administrative, medical, educational, agricultural, forest and other services of both Union and State Governments are now run by Indian personnel. Foreigners are now employed in India only as expert technicians. It will therefore not be too ambitious to claim that India possesses almost all conditions favouring the growth of a federation.

**Distribution of powers in the Federal system.** In a federal government the totality of governmental powers is divided and distributed and the guiding principle of distribution of powers between the central government and local governments is that affairs which are of nation-wide importance and interest and which demand uniformity of legislation and administration are generally entrusted to the central government, while matters of local interests which do not require such uniformity are left to the care of the local governments. All states having a federal form of government follow this principle, although opinions differ as to what matters require uniformity of regulations and what do not. Thus foreign relations, war and peace, coinage, post and telegraph etc. are considered by all states as subjects requiring uniformity and hence to be placed under central control while agriculture, industry, police and prison are left in the hands of the local government. But in some of the more recently established federations, the component states have been given some powers even in international affairs. Thus in the Commonwealth of Australia, the provincial governments can maintain direct relations with the Mother Country through their Agents-General in London. In the U.S.S.R., some of the Republics like Ukraine and Byelorussia have been accorded separate representation on the U.N. In some states again, although the component units enjoy no international status, yet they can create a good deal of difficulty in the matter of prosecuting a particular foreign policy by the central government. But great difficulty may arise in those federal systems where local governments are authorities of residuary powers and the central government is an authority

of delegated powers. Thus in the U.S.A., civil and criminal law, law regarding marriage and divorce are local, not national as in Germany or Canada. The result has been that these and certain other matters which are national in their scope and are badly in need of uniform regulation have produced variety of legislation which has in many cases embittered inter-state relation. In some of the newly-created federations, the practice is to make a tripartite division of powers into federal, provincial and concurrent, the last named comprising subjects over which both the national and the local governments are competent to legislate. In case of a conflict between the laws over concurrent subjects, the federal laws generally prevail over local laws. But whatever may be the underlying principle of distribution of powers in a federal system, making central government weak or strong, it is desirable for the sake of its stability that the manner in which powers have been distributed between them should be altered only by the sovereign itself and not by either of the two alone.

**Federal Control over Local Governments.** The nature of the control exercised by the national government over local governments varies both in kind and in degree from state to state. Thus, the constitution of the U.S.A. enjoins upon the national government the duty of enforcing the provision that all the component states maintain only the republican form of government. Similar was the provision in the Weimar Constitution of Germany, requiring the states to maintain a republican form of government with a cabinet system. In the Dominion of Canada, the Governor-General possesses not only the power to appoint Lt. Governors for the provinces but also the power to disallow acts of the provincial legislatures. In the U.S.S.R., although the Constituent Republics have been given the legal right to secede from the Union, the Union or the central government reserves the right to confirm the taxes levied by the Constituent Republics and also the right to determine the basic principles in the domain of education and public health which will apply throughout the union. Lastly, the national government in almost all federations has the right to intervene in local affairs for the preservation of public safety and order. It need not even wait for a formal request

from the state or province affected by internal disturbances, but on its own initiative, the central government may intervene to restore order and peace

In some federal governments as in the U.S.A., Canada, the central government maintains a separate set of its own officials to enforce its laws, collect revenues and to discharge other federal functions, while in Switzerland, Germany, the central government instead of maintaining a separate set of federal officials, depend more on the officials of the provincial Governments for putting into execution federal laws. In India the President may, with the consent of the government of a state, entrust to its state officers functions in relation to any matter falling within the ambit of the union

Reliance on provincial authorities secures economy by the avoidance of duplication of governmental machinery, but the system may prove burdensome to the provincial authorities which may not always prove equal to the task

**Merits of Unitary Government.** Unitary system of Government secures the advantages of a single system of law, policy and administration *throughout the country*. The advantage of a unitary government is more marked in the fields of foreign policy and national defence. The administration is more simple but less expensive. A unitary government is therefore stronger than a federal one inasmuch as it can very effectively bring all the forces of government to bear directly upon the problems of administration to be solved

**Demerits.** The greatest drawback of the unitary type is that it leaves little scope for the growth of local self-government. Local needs which are varying in degree and kind are neglected. Local initiative is repressed and concentration of powers in a single organ facilitates the growth of a centralised bureaucracy

**Merits of Federal Government.** A federal government, more than any other form, affords the means by which small states may unite together to form a powerful state and thereby obtain all the advantages of a big state. The states thus uniting together need not sacrifice their local autonomy in respect to matters which concern them alone. It is the only form of government which makes it possible to have uniformity of

regulation throughout the country in respect to those matters where such uniformity is essential and at the same time maintains diversity in purely local matters where diversity is desirable. The division of power relieves the central government of a federation of the burden and congestion of work which oppress it under the unitary system. Furthermore, a federal government is the best school for training the people in the art of self-government and thus it stimulates the interests of the people in public affairs. Lastly, the federal system helps to preserve the rights of the people by counteracting the tendency to the use of a despotic centralised government.

**Demerits.** A federal government is unable to conduct its foreign affairs with the same ease and independence with which a unitary government conducts its foreign affairs. It may be handicapped by the whims of a particular state. The national government of the U.S.A. is often put to great difficulties in enforcing treaty obligations. The weakness of a federal government is more manifest in the administration of internal affairs which are divided and distributed between the central and local governments. Division of powers means weakness and leads to diversity of legislation. The organization is very complex and requires duplication of governmental machinery involving increased cost of operating it. The greatest danger of the federal system is that it is liable to division into groups and factions by the formation of separate combination of states. The evils of combination are potent in the United States where any proposal for constitutional amendment may be disapproved by the combination of more than one-fourth of the states. Besides, the possibility of a conflict of jurisdiction between the national and local authorities is always present and in the absence of a satisfactory solution, conflict of jurisdiction may lead to the break-up of the union by secession or by armed rebellion. Lastly, trouble, expense and delay are inherent in a federal government, due to the complexity of a double system of administration and legislation.

### **Federalism as a principle of state organisation.**

There are writers who are very critical and also sceptical about the success of federalism as a principle of state organisation.

tion Profs Dicey and Lowell have levelled charges against federalism which, according to them, either degenerates into a unitary state or gives rise to a loosely-jointed state divided against itself with the result that a dominant state or a combination of smaller states fight for supremacy thus sacrificing the principle of federal equality. Lowell cites the example of Germany before the First World War in support of his view and points out that federalism simply creates divided allegiance, weakens national solidarity and makes it impossible for the central government to pursue a bold policy of national progress both in respect to home and foreign affairs.

The charges are partially true and in some of the earlier federations the defects manifested themselves so prominently that the federal forms were to be dissolved. But the defects are however remediable and as a matter of fact the history of federalism proves that where the federal constitution is carefully drawn up leaving no room for quarrel among the component states, the federal form has proved to be the most successful form of government. The prosperity and progress of the U.S.A. may be said to be due to its federal form of government. The thirteen colonies which were the original members of the federal organisation would not have counted much in their individual capacity either in world politics or in world trade if they were not united. The peace of Europe would have been disturbed many times more if the cantons of Switzerland were not organised on a federal basis.

Prof Laski who was an ardent advocate of the federal principle boldly asserts that 'because society is federal, authority must be federal also'. He goes so far as to suggest that the federal principle which has been remarkably successful in removing friction and preventing disintegration internally should be extended externally also in the matter of inter-state relation. No nation today is self-sufficient. The political, cultural, economic and social interdependence of states makes it all the more necessary on the part of the states to organise them on a federal basis in accordance with the principle that 'what touches all should be decided by common agreement of states'. As in national affairs, so in the realm of international politics, the principle of federation will go a long way not only in prevent-

ing international jealousies and conflicts but also in promoting international co-operation which might be utilised for the purpose of furthering the cause of peace and progress not of any nation in particular but of humanity at large. The federal principle was very feebly applied to the organisation of the 'League of Nations' and the principle, in spite of its failure in the case of the League, has been applied in the organisation of the United Nations and this time it has not proved so frail as in the previous case.

Thus on a close and careful study of federalism, it appears that its advantages outweigh the disadvantages. It may be safely asserted that it is the only form of government which is in keeping with democratic principles and is specially suitable for countries with vast area and population and with diversity of race, language and religion. The only way to make the world safe for democracy or to make democracy safe for the world lies in organising the world states on a federal basis.

**Parliamentary or Cabinet Government.** The Cabinet form of government is a system in which the real executive known as the Cabinet or Council of Ministers consists of the chosen leaders of the majority party in the legislature. The executive in this form is directly and legally responsible for their political policy and action to the legislature and through them to the electorate. The nominal executive head may be a constitutional monarch as in England or an elected President as in France but he holds a position of irresponsibility. The cabinet which is the real executive is in effect a committee of the legislature and continues in office so long as it commands the confidence of the legislature, particularly of the lower house. The essential feature of the cabinet system is the collective responsibility of the ministers to the legislature, and whenever the latter expresses its want of confidence in the ministry, they resign in a body. The ministry as a whole sail in the same boat, they float or sink together. There is no separation of powers in the cabinet system, the executive being an integral part of the legislature. The relation between the executive and the legislature is one of intimacy and inter-dependence.

The Cabinet system had its origin in England and little by little it spread to other countries. In England the king is the

nominal executive while the cabinet is the real executive. The members of the Cabinet are members of either the House of Commons or of the House of Lords. But though the Cabinet with the Prime Minister at its head is representative of both the Houses, it is responsible only to the House of Commons and through it to the electorate. In England, the Prime Minister can appeal to the electorate by dissolving the lower house and can order a general election on the results of which the tenure of ministry usually depends. The Cabinet system is also in vogue in France where cabinet members need not necessarily be the members of the legislature. But as cabinet members, they have a right to take their seat in either of the two Houses and to participate in the deliberations of the legislature. The French system of cabinet government differs from the English system in other important respects as well. In England, cabinet members are also Parliamentary leaders who guide and direct the course of legislation. But in France, the ministry instead of leading and guiding the Parliament, is itself controlled by the legislature even in respect to the details of legislation and administration. The French Cabinet has, under the new constitution, only a limited right to dissolve the legislature and even this limited right it can very seldom exercise. On the contrary, it is the cabinet which is overthrown very frequently upon minor questions by the legislature. In England, the legislature makes the ministry but the ministry can unmake the legislature. In France the legislature unmakes the ministry.

**Non-Parliamentary or the Presidential Government.** It is a form of government in which the executive is constitutionally independent of the legislature and the legislature of the executive in respect to their policies and powers and duration of their tenure. The government of the USA is the best example of the presidential type. The President is the executive head and is indirectly elected by the people for a specified term fixed by the constitution. He is not a member of the legislature and has no direct control over legislation. He cannot be removed from office by votes of non-confidence of the legislature. He is assisted in his executive work by ministers who are all appointed by him and solely responsible to him.



They, like their chief, are not members of the legislature and are not affected by any vote of censure of the legislature. These ministers are not the colleagues of the President but only his 'Secretaries' who are individually responsible to him. The President and his Secretaries may be turned out of office by the legislature only by the cumbersome procedure of impeachment, if their conduct becomes criminal. Similarly, if the views of the legislature in respect to public policy are different from those of the executive the latter cannot dissolve the legislature and appeal to the electorate. The distinguishing mark of the presidential type is the almost complete separation of the executive and legislative departments.

### **Points of Difference between the Parliamentary and the Presidential Forms of Government.**

*Firstly*, in the parliamentary or cabinet form of government there is, besides the real executive, a nominal executive head who is either a hereditary monarch as in Great Britain or an elected President as in India. The hereditary monarch or the elected President reigns but does not govern, the real work of governing the country being vested in a cabinet or council of Ministers. In sharp contrast to this system, the presidential form is characterised by the supremacy of the President who is not only the titular head but also the real head of the executive.

*Secondly*, the council of ministers, i.e. the real executive in the parliamentary form, though it has a fixed term of office, may be removed earlier by an adverse vote of the legislature but the President of the non-parliamentary form is not affected by a vote of censure of the legislature, his mode of election and term of office being fixed by the constitution.

*Thirdly*, in the parliamentary form, the real executive is dependent on the legislature inasmuch as its term of office depends on the approval or otherwise of its policy by the legislature. But in the presidential form, the President is independent of the legislature. He need not count upon the support of the legislature for continuing in his office. He is virtually an unremovable executive within the term of his office.

*Fourthly*, ministry or cabinet is formed in the parliamentary form by the leaders of the majority party headed by a Prime Minister. All the members of the ministry must be members of the legislature and as members of the legislature, they introduce bills, formulate policies and prepare the budget. But in the presidential form, the ministry or the cabinet as it is called by courtesy is not formed by the leaders of the party or parties but selected by the President himself. Party leaders are very seldom to be found in the President's cabinet, they are invariably in the legislature and play an important role in legislation.

*Fifthly*, cabinet members in the parliamentary form enjoy almost equal status with the Prime Minister who is an equal among equals though as the leader of the team, he has some rank and precedence. The Prime Minister can very seldom override the decision of his Cabinet colleagues and as a matter of fact, decisions are taken by a majority vote in the Cabinet. But the picture is different in the presidential form where the President is the master and other Cabinet members are merely his subordinates whom he can appoint and dismiss at his will. President's voice drowns all other voices in taking decisions.

*Lastly*, the parliamentary form is marked by a union of powers between the executive and the legislature whereas the essential feature of the presidential form is the almost complete separation of powers between the executive and the legislature. In the parliamentary form of Great Britain, all the members of the executive cabinet must be members of the legislature and take part in law-making, formulating policies and in controlling finance. They remain in office so long as they command the confidence of the legislature. They can also dissolve the legislature. But in sharp contrast to Great Britain stands the presidential system of the USA where the President is not a member of the legislature, cannot directly influence legislation and cannot be removed by the legislature. He cannot also dissolve the legislature.

*Merits of the Cabinet System* The excellence of the Cabinet system lies in its harmonious collaboration between the executive and the legislative departments, thus ensuring

steady and orderly progress in the work of the government. It is in effect the only form of government in which the responsibility of those who execute the laws and govern the country is effectively enforced. Cabinet government generally rests on the support of the majority party. The party-in-power is always exposed to the criticism of the opposition and hence it cannot afford to be unmindful of the real interest of the people. Again, the party system on which it is based leads to vigorous party organisation and helps the training of the people in the art of politics. Another advantage of the system is its flexibility and elasticity which prove to be the elements of strength in times of emergency especially in war.

*Demerits* In the first place, the Cabinet system of government violates the principle of separation of powers, the executive being a part of the legislature. The system also does not provide for stable government. As the government rests primarily on party support, any change in the party politics or in party organisation leads to a change in the ministry. Frequent changes in the ministry is likely to hamper political progress. In times of war and other emergencies, the system cannot work smoothly as it is very difficult to adapt itself to meet the new situation when unity of policy and action is badly needed. Lastly, the Cabinet system is criticised as a dictatorship of one man, the Prime Minister, or a small group of men who exercise their power on the support of a subservient legislature which is forced to submission by threats of dissolution.

*Merits of the Presidential system* The Presidential system is more stable than the Cabinet system as both the executive and the legislature enjoy fixed terms of office. It also secures a strong and vigorous executive who can work with a singleness of purpose. The executive authority is concentrated in one hand and this greatly helps in times of war when concerted action among the executive is keenly felt. The system produces great efficiency in the ministers as they are not distracted by the necessity of frequent attendance in the legislature. In the field of legislation, the system ensures efficiency as the legislature is also free from the interference of the executive.

*Demerits.* The Presidential form is criticised as being autocratic, irresponsible and dangerous. It is autocratic because the executive, though a nominee of the nation, is independent of its control. It is irresponsible because the executive cannot be held accountable to the legislature for its policy and action. It is dangerous because there is no effective means by which the responsibility for the exercise of power may be effectively enforced. He may misgovern for the duration of his term, but so long as his conduct is not criminal, he cannot be removed from office either by the legislature, or by the electorate. Lastly, the absence of co-operation between the executive and the legislature consequent on a rigid separation of powers has resulted in frequent deadlocks which involves loss of efficiency and energy.

Reviewing the merits and demerits of each of the types, it may be said that Presidential system serves its purpose better in times of war, though it is less helpful in times of peace. It is suitable for a country with vast area and population while the Parliamentary system is preferred for states of moderate size. "The Presidential system was built for safety and not for speed."

**Bureaucratic Government.** A Bureaucratic government is described as one which comprises a class of administrators who are appointed to public service only after a regular course of study and examination which make them pre-eminently fit for the job for which they are intended. These persons remain in office so long as they are of good behaviour and retire on pensions. The public servants under this system regard themselves as a class, distinct from other classes of society and "tend to acquire an *esprit de corps* somewhat similar to that found among the soldiers of a regular army." A Bureaucratic government is characterised by 'red-tapism', i.e., extreme formalism and tends to over-emphasize administrative routine rather than fundamental principles. Burke rightly remarked that such a government tends to think more of form than of substance and as such it cannot be responsive to the public opinion of the country. The extreme example of a bureaucracy was that which existed in Prussia during the last century. But the Prussian bureaucracy combined excessive

formalism with a high degree of efficiency, though responsibility was divorced from efficiency. The British system of bureaucracy in India was another example. The higher posts of responsibility were reserved for those who passed the Civil Service Examination. The officials had practically no touch with the people. The administrative machine moved so slowly in India that the system not only tried the patience of the public but also was subjected to a good deal of adverse criticism. Now that India is free, it may be reasonably expected that the public officials, in the discharge of their duties, will be guided by a spirit of service to the people.

**Merits and Demerits of Bureaucracy.** Bureaucracy is however not without its merits. The officials are recruited after a rigid test of fitness for public service and therefore the system secures high skill and efficiency in officers. The permanence of tenure makes the officials efficient and experienced. The importance of the accumulated experience of administrators cannot be minimised in view of the growing complexities of modern social life.

But a bureaucracy is not free from defects. The sole criterion of a good government is not its efficiency. Responsibility can hardly be divorced from efficiency. The serious defect of bureaucracy is that it is not responsible to the people and is the least affected by public opinion. The system practically leaves no room for the education of the people in political affairs. The most serious limitation of bureaucracy, according to Mill, is, "The disease which afflicts bureaucracies, and of which they die—is routine."

## SUMMARY

I *Unitary and Federal Governments* In a unitary government, there is no division of powers but concentration in central authority which is supreme. In a federal, there is a division and distribution of powers between the central and local governments and the constitution is supreme.

II *Two broad types of Federation* The American type of federation is formed by the union of a number of already existing states which surrender some of their rights to a newly-created government at the centre which enjoys limited powers as strictly defined by the constitution. The Canadian type is

formed by the process of breaking up of a unitary state into a number of autonomous provinces to which limited powers are granted by the constitution

III *Marks of a Federation* The marks of a federation are (a) division and distribution of powers, (b) supremacy of the constitution, (c) authority of the federal judiciary to act as the guardian and interpreter of the constitution, and (d) separate allocation of central and local sources of revenue, (e) double citizenship etc

IV *Its essential Conditions* Conditions essential to the formation of a federation are (a) geographical contiguity, i.e., the component states should be situated near each other, (b) factors that promote then national unity, (c) a sentiment of unity, i.e., a desire for union without unity, (d) political equality which prevents the hegemony of one state over others, and (e) political competence to discharge then federal obligations

V *Presence of the Conditions in India* Geographical contiguity exists and a sense of unity is also, partially, present among the diverse population of India, though it is often marred by extreme communalism and provincialism. Judging from all points of view, it seems that a federal form of government will be able to preserve the fundamental unity of India in the midst of her diversities

VI *Distribution of powers in the Federal system* The general principle underlying the distribution of powers in a federal system is that common affairs requiring uniformity of regulation are entrusted to the central government while matters of local concern are administered by the local governments. In some of the recent federations, the constitution has made a three-fold division of powers instead of a two-fold division. The division of powers may make either a strong centre with weak provinces as in Canada or strong provinces with a weak centre as in the U.S.A.

VII *Federal control over Local Government* 'The national government of all federation is vested with the power of intervention in local affairs in enforcing the provision of the constitution and also for the preservation of internal peace and order. The federal government may execute federal laws either by its own officials or by the officials of the local government

VIII *Merits of Unitary Government* It secures (a) uniformity of legislation and administration throughout the country, (b) it is advantageous in the field of foreign policy and national defence, (c) it is simple and less costly

IX *Demerits* (a) It retards the growth of local self-government, and (b) facilitates the growth of a centralised bureaucracy

**X. Merits of Federal Government** (a) The union of a number of small states into a federation secures their local independence and integrity. (b) It maintains both unity and diversity in those spheres where their preservation is considered essential. (c) It relieves the Central Government of much of the congestion and pressure of work. (d) It provides for the political training of the people in the art of self-government. (e) It checks the growth of a despotic centralised government.

**XI Demerits** It suffers from (a) inefficiency and delay in the conduct of foreign affairs and (b) in the administration of internal affairs. (c) Double system of government increases complexity and makes it more expensive. (d) There is always the danger of formation of groups by the combination of several states leading to the dissolution of the federation.

**XII Federation as a principle of state organisation** Federation as a principle of state organisation has not found favour with many writers who over-emphasise its defects. But really speaking, it is a principle which alone can maintain unity in diversity. In many cases as in the U.S.A., Canada and Switzerland, the principle has succeeded in obliterating most of the differences by emphasising the points of agreement. Pacifists and internationalists hope that the threat of war can be permanently removed only by organising the world states on the federal principle.

**XIII Cabinet Government** It is a form of government in which there is full and harmonious co-operation between the executive and the legislature. The executive is made up of the leaders of the majority party in the legislature to which it is responsible.

**XIV Presidential Government.** The distinguishing feature of this system is the almost complete separation of the executive and legislative departments and the independence of each against the other in almost all spheres.

**XV Merits of the Cabinet System** (a) It ensures co-operation between the executive and the legislature and (b) secures the responsibilities of the executive to the legislature. (c) Fear of criticism by the opposite party makes the government cautious and mindful of the interests of the public. (d) It secures healthy party organisation, (e) and makes the system of government elastic and adaptable to varying circumstances.

**XVI Demerits** (a) The system cannot secure stability of government as a change in party politics may lead to a change in ministry. (b) It is unsuitable in times of emergencies when concerted action is necessary. (c) It may lead to the dictatorship of the cabinet when the legislature is not sufficiently strong.

**XVII Merits of the Presidential System** (a) It is more stable, and (b) secures a strong executive independent of the legislature (c) Concentration of authority in one hand is helpful in times of emergency (d) It secures freedom of the legislature from excessive executive interference

**XVIII Demerits** (a) It is autocratic, irresponsible and dangerous (b) Want of co-operation between the executive and the legislature leads to frequent deadlocks which hamper the work of the government

**XIX Bureaucratic Government** It is a government run by a class of officials who are specially trained for the job. They care more for administrative routine than fundamental principles. They consider themselves to be the masters and not servants of the people. The British bureaucracy in India was a case in point.

**XX Merits and Demerits** Permanency of tenure and experience in government service make bureaucracy highly efficient. But it is irresponsible and excessively routine-bound.

## QUESTIONS

1 Discuss the characteristics of a Federal Government. Illustrate your answer by reference to the United States of America. (C U 1946, Gauhati, 1948)

2 What are the conditions essential to the formation of a federal union? Explain the necessity of a written constitution for federal union. (C U 1949)

3 Discuss the strength and weakness of Federation. (Punj 1943)

4 Critically examine the respective merits and defects of a bureaucratic and a popular government. (C U 1946)

5 Illustrate the distinction between Parliamentary and Non-Parliamentary executive from Great Britain and the United States of America. (Gauhati, 1949)

6 Is the British Empire a Federal system? Distinguish between the central and local governments in a Federal system. What, if any, is the nature of control exercised by the central over the local governments in such a system? (C U Hons 1931)

7 Discuss the characteristics of a true federal union as contradistinguished from (a) a confederation, and (b) a unitary state. Illustrate your answer. (C U Hon 1950)



8 Wherein, according to your view, lies the essence of federalism?

How would you distinguish a typical federal union from a league or confederation? Illustrate your answer

(C U Hon 1957.)

9 'The Federal Union is a sort of composite state, a new creation of constitutional law, not a band of states connected together by international agreement'

Explain this statement

(Gauhati, 1949.)

10 What are the conditions for the success of a federal union? How far do they exist in India?

(C U 1958)

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## CHAPTER XIII

### THE THEORY OF SEPARATION OF POWERS

#### *References*

W F Willoughby—The Government of Modern States

Laski—Grammar of Politics, pp 295-311

MacIver—The Modern State, Bk 3, Ch XII

Lipson, L—The Great Issues of Politics, Ch XI

**Its meaning.** The various activities of a modern government are usually divided into three parts, viz., legislative, executive and judicial. The legislative function consists mainly in the making of laws, the executive is concerned with the function of enforcing these laws while the judiciary decides how these laws apply in specific cases. Now these three functions may be united in one person or one body, as was generally the case in early days. The theory of separation of powers states that the three departments of the government should be separate from, and independent of, one another. The legislature should be independent of the judicial and executive departments. In the same way, both the executive and judicial departments must be independent of the control of the legislature. The theory implies that each of the organs should be supreme within its own sphere. Where the powers or any two of them are united in the same person or body of persons, there can be no liberty.

**Development of the theory.** The theory of separation of powers is no primordial principle born with the state itself. It is a product of modern democracy. But the idea of a three-fold division of state-functions may be traced back to the writings of Aristotle, Cicero and Polybius. Aristotle divided the functions into Deliberative, Magisterial and Judicial. But neither in Greece nor in Rome, there was any clear distinction between these powers. The French writer Bodin was the first to emphasize the necessity of separation of powers and especially urged the separation of judicial functions from the other two. But the first systematic treatment of the theory was made by Montesquieu, another

French writer, who made an analytical study of the British constitution and came to the conclusion that "there would be an end of every thing were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers" According to Montesquieu, the British constitution is the best because it safeguards individual liberty, more than any other constitution, by a clear-cut separation of powers. He was therefore the first writer to make the theory of separation of powers a doctrine of individual liberty. But Montesquieu was greatly mistaken in his view on the British constitution which is primarily based on the combination of powers rather than on separation. His error was largely due to the fact that he concerned himself only with the principle of the English constitution without any reference to its actual practice. But in spite of its defects, the theory was advocated by many contemporary writers. His viewpoint was further analysed and stressed by the English Jurist Blackstone and the American writer Hamilton in 'Federalist'. In its practical side, the theory exercised a great influence upon the framers of the French and the American constitutions. In fact, the incorporation of the *Droit Administratif* in the French constitution and the adoption of the Presidential form of government in the United States of America are the direct outcome of the practical influence of the theory. But the theory has lost much of its sacrosanct character in modern times.

*Criticism* The theory has been criticised on the ground that absolute demarcation of powers is impossible. In practice, every organ is required to participate in the work of others. "The separation of function need not imply a complete separation of personnel" Even Montesquieu, the most ardent advocate of the theory, did not contemplate an absolute separation of powers as is evident from the example of the British Constitution which he chose to illustrate his theory.

*Secondly*, an absolute separation of powers does not exist in any of the constitutions. There is hardly any government in which the three organs are completely independent of one another.

**U.S.A.** The theory in its extreme form was adopted in the constitution of the U.S.A. But even there, the President who is the head of the executive, exercises considerable influence over the legislature by his presidential message and by exercising his partial veto over acts passed by the legislature. The Legislature (the Senate) has certain executive functions, e.g., ratification of treaties and of certain appointments made by the President. The President appoints the judges of the federal courts with the advice and consent of the Senate and the federal courts also possess great influence on both the legislature and the executive. The Courts have to decide whether legislative or executive acts are *ultra vires*.

**England.** The organisation of the British government is a standing refutation of the theory of separation of powers as a universal proposition. The Lord Chancellor who is at once a member of the Cabinet, of the House of Lords and the head of the judiciary, invalidates the theory in its application to the British constitution. The members of the executive cabinet are all members of the legislature and responsible to it. The Upper House of the legislature—the House of Lords is also the highest court of appeal. Thus the British constitution, the ideal type according to Montesquieu, illustrates the non-applicability of the theory.

**France.** In France also, there is no rigid separation. The President of the Fourth Republic used to be elected by the two Houses of legislature convened together. The members of the cabinet, like the English cabinet, were the representatives of the majority in the popular House and were responsible to it. The executive also performs some judicial functions as judges of the administrative courts set up for the trial of executive officers.

**India.** In India, there is not only no thorough-going separation of powers but there is a good deal of concentration of authority in the executive. The executive in India, the President and the state Governors, possess an enormous control over the legislature. Some executive officers like the District Magistrates have been vested with judicial functions. The combinations of the executive and judicial functions in

the magistrate has led to the violation of the fundamental principle of justice which consists in a sense of security which the accused persons should feel that he is getting justice in the hands of the trying judge. Under the Indian system, where the magistrate is both a prosecutor and a judge, the accused person cannot feel secure and the ends of justice are not realised. But the judiciary in India has been made independent of the executive and the legislature. The judges of the Supreme Court and High Courts after they have been appointed by the President, cannot be removed ordinarily either by the legislature or by the executive, neither can their salary be altered which is not subject to the annual vote of the parliament.

**U.S.S.R.** In the communist countries especially in the U.S.S.R. and also in Nazi and Fascist states, the theory of separation of powers is looked upon with great disfavour and hence the notion has been completely expunged from governmental organisation. The communist leaders have absolutely no faith in this doctrine which is condemned by them as one of the many devices by which the powerful capitalist class deceive the proletariat class. The communists point out that it is only with a view to concealing the essentially class character of the government that the party leaders having political power in their hands try to whitewash their conduct by enunciating this high-sounding doctrine. But practically in all *so-called* democratic countries, key positions are held by the party leaders who run the whole show of the government. So in the U.S.S.R., there is not only no separation of powers, on the other hand, there is a good deal of personal union of powers. The government of the U.S.S.R. is a government by a single political party, namely, the communist party and the top-ranking leaders of this party constitute the Politbureau whose members virtually rule the country in different capacities, such as, the members of the Council of Ministers, of the Presidium, of the Supreme Court, etc.

**Switzerland.** In Switzerland also, the doctrine finds little place in the organisation of the Government. The federal council which is the executive is elected by the legislature

which cannot drive them from office. The executive and the legislature act in close co-operation, although they are not dependent on each other. The supreme judiciary is elected by the legislature but it cannot declare acts of the legislature null and void

*Thirdly*, government is an organic unity and therefore a rigid separation of powers is practically impossible. As the various parts of the body natural depend on each other, so also there should be inter-dependence and co-operation among the three organs of the body politic. A mere mechanical separation will only lead to chaos and inefficiency. Woodrow Wilson has aptly remarked that "Government is not a machine, but a living thing—no living thing can have its organs offset against each other as checks, and live"

*Fourthly*, it is argued that separation of powers is necessary for safeguarding individual liberty. The USA where the theory has been tried is a free country. In England, there is practically no separation of powers but England is also one of the freest countries of the world. The one irresistible conclusion from the above facts is that individual liberty depends on factors other than a mere mechanical separation of powers. Had it not been so, the English people would have been reduced to zero as was remarked by Rousseau. The truth is that the most effective safeguard of Liberty is the vigilance of the people and not mechanical devices like separation of powers.

*Fifthly*, the theory assumes that the three organs of the government are equal in power. But in practice we find that in every state the legislature is the most important and exercises control over the other organs. It not only makes laws but controls other organs through its power over sources of supply.

*Lastly*, the theory is pernicious in practical politics. In the United States, the Constitution provides for the election of the judges in most of the states by the people instead of appointment by the executive or the legislature. Thus the system has produced serious evils resulting in the loss of efficiency in the popularly elected judges. The people have suffered in order to test a theory

**Evaluation.** The above criticisms lead to one inevitable conclusion, namely, "the strict separation of powers is not only impracticable as a working principle of government, but it is not one to be desired in practice" But there is, on the other hand, the danger involved in the union of powers in the same person or body of persons. The question then is in what sense is the theory true? As we have already seen, neither did Montesquieu nor James Maidson, contemplate a complete separation of powers. What they really contemplated was an *organic* separation of powers as distinct from a *personal* separation. Co-ordination between the heads of different departments is as much necessary in the matter of formulating broad policies as is differentiation necessary between the subordinate staff for working out the details. This differentiation leads to specialisation and specialisation secures efficiency in work. Thus the principle of separation of powers is nothing but an application of the economic principle of division of labour to governmental organisation. Interpreted as above, the theory implies that a *partial* separation of powers as opposed to a *complete* separation should be the guiding principle of governmental organisation. Separation of powers does not mean the *separation of the entire functionaries*.

**Conclusion.** Thus the theory in its extreme form has lost much of its former importance nowadays. The theory served a very useful purpose at the time when it was invented to act as a check on the despotism of the king and at a subsequent period, on the legislative tyranny of Parliament. The dangers which threaten modern democracies are party domination, bureaucratic control and rise of dictatorship and the doctrine is practically of no use against any of these. Then why is separation of powers necessary now? The reason why there should be some separation of powers is not so much the danger to liberty as the loss of efficiency which their union involves. The work of the legislature is entrusted to a representative body which by the very nature of its composition and function, is unadapted to the task of the executive. It is wholly unsuited to discharge the functions of the judiciary because its members are not selected for their capacity or training as judges and because it is a body which is influenced

by outside public opinion. The truth is that the three functions of the government should be entrusted to three different organs in order that each might perform its duties without encroaching upon the sphere of the other. But in the exercise of their powers, the departments should co-operate with one another so that the end of the state may be realised. The real problem is so to organise the three departments that responsibility shall not be divorced from efficiency. "What is needed, in fact, is not separation of functions but their proper articulation, in conformity with the first principles of democracy, that all government is a trust delegated and controlled by the governed."

### **Separation of Powers Re-defined.**

The theory of separation of powers is badly in need of re-orientation in the light of the change that has overtaken the conception of the state. The old idea of the state as a power-system has given place to that of the state as a welfare system and as such it is necessary that power-politics should be replaced by welfare politics.

The idea of power is associated with force which cannot be the basis of the welfare state whose main concern is service to the people. Therefore the word *power* should be treated as obsolete with reference to the modern state. If that be the case, the whole notion of separation of powers is to be transformed into separation of services. But such a separation of the different services of the welfare state will prove to be the very denial of service to the people, for, welfare cannot be achieved piece-meal. The modern state is a great social service organisation the whole of which is based on planning. Planning implies concentration, co-ordination and mutual inter-dependence of different parts for the ultimate success of the whole. In the modern state, therefore, there is little scope for separation of powers in the sense in which its earlier exponents advocated the theory. But this does not mean that governments will have no check, on the contrary, the executive authority of a state in which most of the powers of a modern government are concentrated should be made to follow certain prescribed methods in the discharge of its varied



functions and lastly its activities should be made subject to judicial review.

## SUMMARY

I The theory of separation of powers states that the three organs of the government legislature, executive and the judiciary should be completely separated from one another for safeguarding individual liberty. The principal advocates of the theory were Montesquieu and Blackstone whose writings exercised great influence on the practical politics of the eighteenth century.

II The theory is unscientific. Government being an organic unity cannot be split up into water-tight compartments. The organisation of the modern states also proves that it is neither practicable nor desirable. Individual liberty depends on the spirit of the people and not on separation of powers. Some sort of separation is, however, necessary for the sake of efficiency of the departments.

## QUESTIONS

1 "The strict separation of powers is not only impracticable as a working principle of government, but it is not one to be desired in practice." Discuss.

(C. U. 1943, Gauhati, 1949)

2 Explain the theory of separation of powers. How far has this theory been translated into practice in Great Britain, France and the U S A ?

(C. U. 1926, 1949)

3 Discuss the theory of separation of powers. Do you think that it is essential to provide for separation of powers in any future Indian constitution?

4 Explain the theory of separation of powers. In what sense and with what limitation is the theory true? Is it necessary to secure the true liberty of the individual?

(Punjab 1941, Agia 1943, Pat 1944)

5 In what sense and with what limitations is the theory of separation of powers true?

(Gauhati, 1948)

6 How far is it possible and desirable to carry out the principle of separation of powers in the governmental organisation of a state?

(C. U. 1958)

## CHAPTER XIV

### THE LEGISLATURE

#### *References*

W. F. Willoughby—Principles of Legislative Organisation and Administration.

Laski—Grammar of Politics, Ch VIII.

Marriot—The Mechanism of the Modern State. Vol I, Chs 14, 15

Mill—Representative Government, Ch 13

**Importance of the Legislature.** Of the three organs of the government, the legislature is regarded as the most important because the executive and the judiciary are to work on the basis of the laws made by the legislature. Legislative function, however, depends largely on the nature and character of law-making bodies. Legislatures under dictatorship or legislatures of dependent countries like India before 1947 enjoyed little powers. They are merely consultative in character. The legislatures in countries having a parliamentary form of government are the most powerful, exercising its control over almost all the spheres of governmental activity. The executive is subordinate to the legislature in this form of government as in England and France. In the presidential form, there is an equal balance of powers between the legislature and the executive. The constitution of the USA provides for mutual checks and balances and thus prevents the encroachment upon the sphere of one by the other. The legislature is important because the executive and the judiciary depends on money grants made by it.

**Functions of the Legislature.** Whatever may be the range of powers actually exercised by different law-making bodies, the functions of legislatures in general may be broadly classified into *legislative, deliberative, taxative* and *judicial*. The main function of the legislature is to make new laws, to repeal old laws that have outgrown their utility and to revise existing laws according to the needs of the time. In modern democracies, no law is passed hurriedly. In making

laws, the legislature considers every aspect of the proposed law and particularly its repercussions on the different classes of society. The opinion of the public is invited, the opposition is given an opportunity to criticise the measure and experts are also consulted. Law-making therefore involves an elaborate process which takes considerable time from its start to finish. Thus the legislature is the deliberative organ of the state and deliberation is the soul of legislation. Besides law-making, the legislatures in modern democracies have other functions as well. It controls the public purse. The legislature determines the amount of money to be raised, the methods of its raising, the amount to be spent and the manner in which the money thus raised is to be spent. The legislature also controls the executive directly in parliamentary forms of government and indirectly in the presidential forms. The executive is responsible to the legislature for its policy and action in the administration of domestic, foreign and other affairs. In some states, the legislature can amend the constitutions as in England, in others, it has a share in the amendment of the constitution as in the USA. The legislature sometimes performs some executive functions through its committees. By means of their power over the ministry or finances or over treaties, the legislature controls executive actions both during peace and war. The Foreign affairs committee of the American Senate largely influences the foreign policy of the American executive. Besides these, the legislature exercises some functions which are not purely legislative in character. Some legislatures, as in Switzerland, have elective functions. It settles its own procedure of business, can decide contested elections and can act as a court of impeachment. The judicial function is exercised by the upper house on accusation by the lower chamber. Lastly, the legislature acts as a forum of public opinion. It is a place where diversity of interests and different shades of opinion prevailing in the country are represented and every question of public interest is thoroughly discussed and decisions are made on the basis of the greatest common agreement.

**Duration of the Legislature.** Every legislature should exercise its functions for a temporary period. A permanent

legislature or one which remains in power for a long time is not compatible with democratic principles as too long a term is likely to destroy its sense of fidelity and responsibility to the electorate. Conversely, too short a term will deprive them of the opportunity of proving their worth and utility to the people. The normal duration of the legislature should therefore be neither too long nor too short. A four to five year term is regarded as the best.

**Structure of the Legislature—The Uni-cameral and the Bi-cameral Systems.** When the legislature consists of one house, it is called uni-cameral and when it consists of two chambers, it is known as bi-cameral system. The arguments in favour of the bi-cameral legislature point out the defects of the uni-cameral system while the weakness of the bi-cameral system suggests the merits of the uni-cameral principle. The reasons for the adoption of the two-chambered system are *firstly* that the experiment of having a uni-cameral system did not prove successful in many countries especially in England during the Commonwealth under Cromwell and in France during the Revolution. *Secondly*, under the uni-cameral system, the many advantages accruing from the bi-cameral legislature are lost to a country.

**Arguments for Bi-cameral Legislature.** Leacock has rightly remarked that "of all the means that have been used to secure in the work of the legislation a due amount of caution and reflection, the most important is the division of the legislature into two chambers." The existence of a second chamber prevents the legislative tyranny of a single house. The second chamber protects the liberty of the individual against the legislative despotism of a single chamber. *Secondly*, it acts as an effective check upon the errors of haste and excitement of a single house. A single chamber may prove rash and irresponsible. It may not have the time to consider all proposals for legislation as thoroughly as is desirable. The second chamber may prove its utility in such cases by subjecting every bill to minute examination. Thus it can revise, suggest improvements and act as a healthy restraint upon hasty and ill-considered legislation. *Thirdly*, a second chamber by interposing delay gives the public time for reflection on a particular piece of legislation. No bill is deemed to have been

passed unless it is passed by both the houses. The existence of a second chamber therefore adds one step more to the process of legislation. Sometimes, the second chamber by refusing to pass a bill tries to draw the attention of the public on particular proposals which, in its opinion, should not be passed into laws. Thus a second chamber exercises a "controlling, modifying, retarding and steadying" influence on legislation. *Fourthly*, a second chamber is a good means of securing representation to diverse interests and classes in a country. It provides an effective method for the representation of minorities, labour, capital and other interests as well as men who have honoured the nation in different walks of life. Worthy and capable men who fight shy of election trouble may be provided with seats in the upper house so that the nation may not be deprived of the services of its best talents. *Fifthly*, bi-cameralism is a vital necessity in a federal state. The usual practice in a federal state is that the second chamber represents in an equal manner the component states, while the lower house represents the whole nation, irrespective of state-division. Thus it maintains a proper equilibrium between the centrifugal and centripetal forces. *Sixthly*, the second chamber is regarded as a ventilating chamber where important questions on public policy may be fully discussed. *Seventhly*, it is also claimed that the second chamber secures greater freedom to the executive. Two chambers having almost co-equal powers act as a check on each other, thus giving the executive greater scope in formulating and pursuing its policies. *Lastly*, second chambers usually consist of elder statesmen, men of higher age and greater experience. Their term of office is also longer than that of the members of the lower house. The members are usually men of wide and varied experience and as such second chambers command greater respect and confidence both at home and abroad.

**Arguments against the system.** In spite of the manifold advantages claimed by the advocates of the bi-cameral system, many modern writers have questioned the utility of second chamber in practical politics. Some states, as for example, Yugoslavia, Turkey, Greece and a few other small states adopted the single chamber system before the Second World War. Pakistan and the People's Republic of China have in

Recent times adopted the single-chambered system. Second chambers have also been abolished in almost all the provincial Governments of the British Dominions. Thus it is pointed out by the critics of the second chamber that there is firstly no danger of hasty legislation by a single chamber and secondly if there be any danger at all, it is impossible for the second chamber to prevent the danger of hasty legislation. They argue that the procedure adopted by modern legislatures is so devised that no law can be passed hurriedly. Every bill is examined, scrutinized and discussed threadbare. Every bill must pass through three readings and in between these readings, a bill is referred to a committee which goes into the details of the bill and it can also make additions and alterations in the bill. Thus very few laws are passed hastily. Sometimes, it takes several years to pass an important Act like the Irish Home Rule Act or the Government of India Act, 1935. But if the lower house is bent upon passing a law, the second chamber cannot possibly prevent it because the lower house represents the will of the people and as such it is more powerful. The second chamber therefore cannot effectively check the legislative tyranny of a single house in view of the all-powerful character of the lower house. *Secondly*, the argument that second chambers can secure special representation of classes and interests does not carry much weight. Special representation means special privileges to some and not to all and therefore it militates against the true principle of democracy which seeks to provide equal opportunity for all. *Thirdly*, the existence of a second chamber can hardly be justified even in a federal government. The necessity for proper safeguards to the component states may be fulfilled by a division of powers guaranteed by a written constitution and upheld by judicial decisions. Besides a second chamber is useless in a federal government in view of the fact that representatives vote on party basis and not on the basis of states which they represent. *Fourthly*, no satisfactory method has yet been devised for constituting a second chamber. Hereditary or nominated second chambers are undemocratic and are usually very weak. An indirectly elected second chamber fails to command the same amount of respect as a popularly elected lower house. *Lastly*, the useless character of a second

chamber was propounded by a French writer in the form of a dilemma which runs as follows —“Of what use will a second chamber be? If it agrees with the representative house it will be superfluous, if it disagrees, mischievous.” In any case, Mill rightly remarked that the check “which a second chamber can apply to a democracy otherwise unchecked” is not of any practical value. Among modern writers, Prof. Laski is also of opinion that a legislative assembly should consist of a single chamber which is quite adequate for serving the purpose of a modern state.

### **Basis of Organisation and Functions of Second Chambers.**

Experience shows that a second chamber should be constituted neither on hereditary principle as in Great Britain nor on the principle of nomination for life by the executive as in Canada. A second chamber elected directly by the people as in the U.S.A. may give rise to difficulty in the matter of adjusting its relation with the lower house. It may claim equal or more power than the lower house, thus reducing the latter to a ‘subordinate position’. The method that has been suggested by competent authorities and which has been adopted by some countries in the organisation of their second chambers is that the majority of the members may be elected by the lower house and a small number may be nominated by the executive or by a commission specially appointed by the legislature for that purpose.

The proper functions of a second chamber should *firstly* consist in the examination and revision of a bill brought from the lower house. *Secondly*, it should have the right to initiate only those bills which are non-controversial in character and are not likely to meet with any opposition from the popular assembly. *Thirdly*, it must have the right to interpose that much of delay in law-making which is necessary for eliciting public opinion on bills affecting vital interests of the people. *Lastly*, it should act as a deliberative and ventilating chamber with full power of free discussions on important questions of the day. In short, the second chamber should be vested with the power of making suggestions but it will have no power to resist the will of the people as expressed through the lower house. If it does not bend before the will of the lower

chamber, it is apt to break, as the British House of Lords broke down in 1911

**Bi-cameralism in Indian Provinces and its Utility.** The Government of India Act, 1935, introduced bi-cameral legislature in six of the Indian provinces, namely, Bengal, Bombay, Madras, Bihar, U.P. and Assam. Indian opinion was strongly against the creation of two chambers in the provinces. Second chambers in Indian provinces, based as they were on representation of special interests and nomination by the executive, were directly opposed to popular interests and could seldom act as an efficient revising body. The second chamber was considered more or less a superfluous body, as no important function was entrusted to the provinces. In the absence of a distinctive political responsibility in the sphere of provincial administration, the upper house in a province could hardly carry any weight with the public. A second chamber practically with no utility was considered by many as a luxury to the poor Indian provinces. Moreover, the existence of second chambers used to aggravate the then communal ill-feeling which was disastrous to the growth of nationalism in the country. Lastly, the most important function of a second chamber is to check hasty and ill-considered legislation of the lower house. But, under the previous constitution, the question did not arise. The provincial executive was vested with so many extraordinary powers over legislation that it had almost usurped the powers and functions of the legislature. The second chamber was therefore not necessary in the face of the Governor's extraordinary powers.

The New Constitution of India provided for the creation of second chambers in seven states of the Indian Union, viz., Bombay, Madras, U.P., Bihar, Punjab, West Bengal and for Mysore. Provision has now been made for second chambers in Andhra Pradesh and Jammu and Kashmir. Now that a national government has been established in India, the necessity of creating a second chamber may to some extent be justified at least in the cases of Bombay, Madras and U.P. where both territory and population of the states have increased owing to the merger of some of the Native States which were formerly outside their jurisdiction. With the bi-furcation of



Bombay into two states the necessity for two chambers for that state has lost its former importance. The creation of a second chamber can, however, be hardly justified in the cases of Punjab and West Bengal, both of which have been considerably reduced both in size and population as a result of partition. Besides, the New Constitution of India which came into force from the 26th January, 1950, in spite of its apparent federal structure, shows strong centripetal tendency, the cream of power being vested in the central government. Besides, in the present financial position of these provinces, it is not at all desirable to have second chambers. Under these circumstances, it is very doubtful whether second chambers will serve any useful purpose in the domain of state administration which is not yet free from central control.

**Lower House.** The lower house in almost all countries is organised on a democratic basis. All adult citizens with the exception of lunatics, insolvents, criminals and the like, have the right to choose their representatives. The whole country is divided into a number of electoral districts from which representatives are elected periodically. All states prescribe certain qualifications which the representative must possess for holding office as a member of the legislature. The usual rule is that they must be citizens of the state and must have attained a certain age at the time of election. In the U.S.A., residential qualification is insisted upon. Property qualification is no longer considered as essential except in few states where it is retained for membership in the upper house.

The lower house has been so constituted in every state as to represent correctly the opinion of the people. It is not only a law-making body but possesses greater powers in law-making and in finance. Money bills must originate in the lower house. Its control over national income and expenditure has enabled it to exercise a sort of paternal control over other departments of the government. In Parliamentary democracies, the executive is responsible to the lower house for its policy and action. The executive remains in office at its pleasure.

**Classification of Bills.** Bills are proposals for law-making. When a bill is duly passed, it is known as an Act.

Bills are generally classified into *Public bills* and *Private bills*. Public bills are bills which affect the interest of the whole people while private bills concern particular interests of some individual or a local body like the corporation or the county. Public bills when introduced by an official member, i.e., a member of the ministry are called *Government bills* and when introduced by a non-official member of the house, are known as *Private Members' bills*. Thus a public bill may be either a government bill or a private member's bill. A government bill may again be classified into *Ordinary bills* and *Money bills*. Money bills can be introduced only by a member of the ministry and hence all money bills are government bills. Money bills are further subdivided into *Appropriation bills* and *Finance bills*. The former is a proposal sanctioning expenditure for the year, the latter proposes the imposition of taxes for meeting the expenditure necessary for purpose of the government. The above classification of bills is observed specially in Great Britain.

**Process of Legislation.** In all democratic countries, the process of law-making is almost the same, namely, the ordinary process which leaves the legislature supreme in the sphere of legislation. In India, however, the executive was more powerful even in the sphere of legislation through extraordinary law-making processes of its own.

A bill in order to become an act and a law of the land must pass through several stages in both the Houses. The different stages are (a) the first reading, (b) the second reading, (c) the committee stage, (d) the report stage, and (e) the third reading. Except money bills, all other bills may be introduced in either of the two Houses. A bill after it has been drafted by the member concerned, is introduced in the legislature. The procedure regarding introduction of a bill varies from country to country and also with the public or private character of the bill. The member in charge of the bill or the clerk of the House moves a motion that the bill be read for the first time. Generally, no discussion takes place on the day of the first reading except in the case of a very important bill. The House orders the bill to be printed and circulated among members and a day is fixed for the second reading of the bill. The second reading provides an oppor-

tunity to the members for discussing the general principles of the bill without going into details. At this stage, the opposition may claim a division of vote on the general principle of the bill. If the bill survive the second reading, it is referred to one of the numerous committees into which the legislature dissolves itself at the beginning of the session. The bill is discussed in details, item by item, in the committee which can make amendments to the bill, if necessary. If there is any amendment, the House considers the amendment as suggested by the committee. But the report stage is dropped if no amendment is proposed by the committee. Then follows the third or the final reading. The House considers the bill as a whole and decides whether it should be passed or dropped. The bill is then presented to the other House. There it follows the same procedure. If the other House pass the bill, it is presented before the executive head and with his assent, the bill becomes an act and law of the land.

### **Sovereign and Non-sovereign Law-making Bodies.**

Viewed from the standpoint of power wielded by different legislative bodies, they may be classified into sovereign law-making and non-sovereign law-making bodies. The normal function of all legislative bodies is to make laws but the extent of this law-making power vested in the different legislatures varies and it is on the basis of this difference in the extent of law-making power that legislatures are classified into sovereign and non-sovereign law-making bodies.

A sovereign law-making body is one which possesses original law-making powers, its power not being derived from any other higher authority. Secondly, there is no law which it cannot make, and thirdly, there is no law which it cannot repeal or modify. Fourthly, there is no person or body of persons recognised by law as having the right to question the validity of laws passed by this sovereign body. In short, it possesses almost unlimited power of law-making and laws passed by it extends to every part of the territory of the state.

A non-sovereign law-making authority, on the other hand, is one whose power to make laws is not original but derived from some other higher authority which may be a written constitution or a higher law-making authority.

Secondly, it cannot make all laws ; neither can it repeal or modify all laws and lastly, laws enacted by such bodies may be subject to executive veto or judicial review.

The British Parliament is such a sovereign law-making body. The legal supremacy of Parliament is so unimpeachable that it has been said that "Parliament can do everything but make a woman a man and 'a man a woman." Parliament's authority to make laws is not derived from any other higher authority. Its competence to make laws cannot be questioned by any other authority in England nor can any court of law question the validity of laws passed by Parliament. Again Parliament is both a law-making and a constituent body. It can make or unmake all laws—ordinary as well as constitutional. Lastly, a law passed by Parliament extends to every part of the king's dominions.

In sharp contrast to the legal supremacy of the British Parliament, stands the U.S.A. Congress which is a non-sovereign law-making body. It is non-sovereign in the sense that it derives its power from the constitution which is the supreme law of the land and it has to act within limits set by the constitution. Secondly, the Congress is limited by the power of the Supreme Court which can declare an act of the Congress as *ultra vires* if it is at variance with any provisions of the constitution. Thirdly, laws passed by the Congress are subject to veto by the President. Lastly, the power of the Congress is also limited by the existence of so many state-legislatures which possess independent law-making powers derived from the constitution and hence cannot be encroached upon by the Congress. So it is said that the federal legislature in the U.S.A. is doubly restricted, in England, the legislature is not restricted at all.

It will not be quite out of place to point out in this connection that although in theory, Parliamentary sovereignty still remains unchallenged, in practice, it has undergone important modifications in recent years. Theoretically, Parliament consists of the King, the House of Lords and the House of Commons but in practice, the King and the House of Lords are out of the picture and Parliament now means only the House of Commons. But the House of Commons of today is not what it was yesterday, its own servant, i.e.,

the Cabinet has now become its master. So parliamentary sovereignty now means Cabinet dictatorship. Parliamentary sovereignty has also been limited by the growth of delegated legislation, administrative law, judge-made law and lastly by the recognition of international law as a part of the municipal law of England. Again, no law passed by the British Parliament is applicable to the self-governing Dominions without their express consent. Thus parliamentary sovereignty has now become only a legal fiction.

## SUMMARY

I *Functions of the Legislature* The Legislature is the most important of the three organs of the government. The primary function of the legislature is (a) to make laws. (b) It controls the public purse, (c) In Parliamentary form of governments, it directly controls the executive. (d) The upper house of the legislature acts as a court of impeachment.

The duration of the legislature should neither be too long nor too short.

II *Uncameral and Bi-cameral legislatures* Modern legislatures are usually bi-cameral, i.e., consisting of two Houses. When the legislature is composed of one House only, it is known as uni-cameral legislature.

III *Arguments for Bi-cameral legislature* The main arguments in favour of the bi-cameral system are that (a) it prevents legislative tyranny of a single house, (b) acts as a check upon hasty and ill-considered legislation, (c) secures representation of special classes, interests and able men. (d) it is essential to a federal government to guarantee the equality of position of every state.

IV *Arguments against* (a) There is no danger of hasty legislation because no law can be passed except through an elaborate procedure. (b) The lower chamber is usually so powerful that it is impossible for the upper House to check it. (c) It is very difficult to constitute a second chamber on a satisfactory basis. (d) It is either superfluous or mischievous.

V. *Organisation and Functions of Second Chambers* The second chamber may be constituted on (a) hereditary principle, or (b) principle of nomination for life by the executive, or (c) direct election by the people, or (d) indirect election by the people. The best method is that of indirect election of the members by the lower House combined with the principle of nomination of some members by the executive or by a special commission of the legislature.

The proper functions of a second chamber are (a) revision of bills, (b) initiation of bills of a non-controversial character, (c) interposition of delay for eliciting public opinion, and (d) deliberation and discussion

VI *Bi-Cameralism in India* The Government of India Act, 1935, created two chambers in six of the Indian provinces including Bengal. They were not only useless in view of the special law-making powers of the executive, but were mischievous too. They opposed popular measures, were expensive and tended to aggravate communal ill-feeling. The New Constitution of India also provides for double chambers in six states. During the initial stage, second chambers in six of the states could have been dispensed with as they serve practically no useful purpose, besides being too expensive for the newly created states some of which have been considerably reduced in size, population and consequently in income.

VII *Lower House* The lower House consists of the representatives of the people who are citizens and possess certain other qualifications prescribed by the state. Its functions consist in making laws, controlling income and expenditure of the state and also controlling the executive.

VIII *Classification of Bills* Bills are either Public or Private according as the nature of the interests affected. Public bills are either Government bills or Private members' bills according as the proposer of the bill. Government bills may be either ordinary bills or money bills according as the matters involved in the bill.

IX *Process of legislation* A bill must pass through five different stages before it becomes a law. The steps are (a) first reading, (b) second reading, (c) committee stage, (d) report stage, and (e) third reading. It follows the same procedure in the other House and then with the assent of the executive, it becomes a law of the land.

#### X *Sovereign and Non-sovereign law-making Bodies*

A sovereign law-making body is one which possesses (i) original power not derived from a higher authority, (ii) it can make, amend or repeal all laws, and (iii) laws passed by this body cannot be questioned by any other authority. The British Parliament is an example of such a body.

A non-sovereign law-making body is one which does not possess (i) original power but its power to make laws is derived from a higher authority, (ii) it cannot make, amend or repeal all laws, and (iii) laws passed by it are either subject to executive veto or judicial review.

The U S A Congress is a non-sovereign law-making body.

## QUESTIONS

1 Discuss the position and utility of Second Chambers in modern states (C U 1944)

2 Do upper chambers serve any useful purpose? Do you like to have an upper chamber in Bengal? Give reasons for your answer (C U 1933)

3 What are the functions of a modern legislature?

4 Describe the process of law-making in a modern democracy

5 A second chamber is almost indispensable in a federation such as the United States. Why? Do you think that a second chamber is a necessity in the case of India?

(Gauhati, 1948)

6 What are the essentials of a good second chamber? What should be its proper functions? Give your own ideas about the satisfactory composition of second chamber

(Allahabad, 1911 Agia, 1943)

7 "If a second chamber dissents from the first, it is un-chievous, if it agrees with it, it is superfluous." Examine this statement. Should West Bengal have a second chamber? Give reasons for your answer (C U Hon 1949)

8 How would you distinguish a non-sovereign law-making body from a sovereign law-making body? Illustrate your answer (C U 1950, Gauhati, 1949)

9 Which is a better check on a popularly elected legislative body in a modern state—a Referendum or a Second Chamber?

Give reasons for your answer.

(C U Hons 1954)

## CHAPTER XV

### THE ELECTORATE

#### *References*

Garner—Political Science and Government, Ch XIX

Mill—Representative Government, Chs VIII-XII

W F. Willoughby—Principles of Legislative Organisation and Administration

H. Finer—The Theory and Practice of Modern Government, Vol I, Part IV

**Universal Franchise.** In every modern state, there is an electorate consisting of the people who are qualified by the law of the state to elect members of the legislature. The modern tendency in all states is to confer the right of voting on all adult citizens, irrespective of sex, religion, nationality, residential or educational qualification and possession of property. But in actual practice, suffrage is confined to a section of the population of the state who can satisfy the conditions prescribed by the electoral rules of the state. The constitution of the USSR is the most catholic in this respect which confers the right of voting on all citizens who have attained the age of 18. The reason why states restrict the right to vote is not far to seek. Suffrage is no doubt a natural and inherent right of every citizen. But it is also the fundamental duty of every citizen to exercise the right for public good. The state therefore reserves to it the power to grant the privilege only to those who know what they are voting about. A wise exercise of the right requires a high degree of honesty, intelligence, political training and public spirit from the citizens. Those who possess the above qualities are allowed to exercise the right to vote.

Generally speaking, every state denies the right to many either because they are incapable of taking any interest in public affairs or because they do not possess the necessary intelligence to understand public questions and therefore



incapable of wisely exercising the right. Thus every state excludes minors, idiots, lunatics, paupers, vagrants, persons convicted of serious crimes and foreigners. Some states exclude holders of certain offices while others deny the right to those who are illiterate or those who possess neither property nor pay any direct tax to the state. Thus the privilege is not absolutely universal.

### **Arguments for universal franchise.**

The advocates of universal franchise argue that modern governments rest on the consent and co-operation of the people and as such the popular will is the only basis of modern governments. This popular will is expressed through the right to vote. The right to vote enables the citizens to participate in the affairs of the state and makes them politically conscious of their rights and duties. To deny this right to the people is the very negation of the principle of popular government.

*Secondly*, no government can be said to be a really popular government unless the people have the right to vote. The will of the people which is the basis of popular government is expressed through representatives elected by them. In order to make the government really democratic in character, the people must possess the right to vote so that they may act through their chosen representatives.

*Thirdly*, the right to vote is an effective means by which the people can change an inefficient and irresponsible government by refusing to vote for them. The right to vote is therefore an effective check upon despotic government.

*Lastly*, political equality of all citizens is an accepted dogma in modern political science. There is therefore no reason to vest this right upon some and to deny it to others. Such a discriminatory treatment is inconsistent with true democratic principles which proclaim liberty and equality for all. A state which makes such an invidious distinction between man and man cannot claim the allegiance of all its citizens. Such a state cannot be called a welfare state.

### Arguments against universal franchise.

J. S. Mill, Henry Main and Leckey have opposed the introduction of the system of universal franchise. They argue that the right to vote should be denied to those who are incapable of exercising the right correctly. In opposing the system, Mill has laid great emphasis on the educational qualification of the voter. According to him, 'universal teaching must precede universal enfranchisement'. He says, "I regard it as wholly inadmissible that any person should participate in the suffrage without being able to read and write. . . . and perform the common operations of arithmetic". It is very difficult to agree with Mill's views inasmuch as it is also inadmissible to regard men who are not acquainted with reading, writing and with the elementary principles of Arithmetic as inferior as voters to those who are simply acquainted with the three R's. The exercise of the right to vote requires some amount of common sense and a sense of social good from the voter and these qualifications are to be found among the illiterates as much as among the mere literates. Besides, an illiterate voter is more unsophisticated than a literate one and as such he is less amenable to outside influence through the press, platform and other modern means of propaganda. Even in his own country, the extension of franchise did not follow the principle laid down by Mill. The rate of enfranchisement moved far ahead of the rate of literacy in England. But all these arguments do not certainly mean that literacy is not necessary. Literacy, of course, entitles a man to vote, irrespective of any other qualification but it should be remembered that literacy should not be regarded as the sole criterion of the right to vote.

Ownership of property and payment of a tax used to be regarded as necessary qualifications for franchise. But in modern times, possession of property is regarded as one of the necessary qualifications of the right to vote but not as the sole criterion of franchise. Voting which is a political right should not be made absolutely dependant on the possession of property. In that case, democracy will degenerate into oligarchy. Payment of a tax is an argument which stands to reason. The principle that taxation and represen-

tation should go together has long been accepted and in modern times, all classes of people are made to pay taxes—direct or indirect

The right to vote is therefore regarded as an inherent right of every citizen provided he is capable of knowing what he is voting for.

### **Qualifications of a Voter.**

Suffrage was at first confined to a very small proportion of the total population of a state. The right to vote was a special privilege of the nobility and the clergy and was completely denied to the common man. With the gradual strengthening of the idea of human equality and of popular sovereignty, the demand for universal suffrage manifested itself and the French Revolution transformed the right into a practical one exercisable by the people. The new state of the USA was quick in extending the right to vote to the people. By the three Reform Acts of the nineteenth century England also introduced the principle of wider and more equal suffrage by extending it to agricultural and industrial workers. Other states gradually recognised the principle and in the present century in almost all the democratic states, the battle for universal suffrage has been won. But universal suffrage does not mean that all persons have the right to vote and the restrictions arise out of considerations of expediency. All states have prescribed certain qualifications which a voter must possess in order that he or she may exercise the vote only for public good. The qualifications may be summarised as follows.

**Age** It is the common practice of all states that they prescribe certain minimum age when a person is considered eligible for voting. A certain maturity of age at which men are considered capable of exercising their intelligence and judgment is a requisite to the exercise of franchise. The age qualification varies between twenty and twenty-five in different countries. In India, it has been fixed at twenty-one, in the USSR, it is the lowest. The minimum has been fixed at eighteen. Nearly half the entire population of a state is disfranchised by the enforcement of this qualification.

*Sex* For a long time women were denied the right to vote on the ground that they were economically and legally dependent on their male relations and also on the ground of their incapacity for military service. But women proved their worth in different spheres of life and now women have won not only political rights but also equal political rights with men. This is indeed a move in the right direction.

*Citizenship* Most states require that the voters should be natural-born citizens of the state or a naturalised citizen. But it should be noted here that the state reserves to itself the right to withhold franchise from a citizen or to confer the right upon a resident alien.

*Property* For a long time, the right to vote was confined to those who possessed a property of a minimum value or who paid a certain amount of tax. Although property qualification in general has been abandoned, some of its elements still persist in the electoral rule to the extent that paupers do not enjoy the right or in some states property-holders are given the right to additional votes.

*Other qualifications* It is absolutely necessary that persons exercising the right to vote should be of sound mind, capable of exercising their intelligence and judgment in deciding questions of public interest. So all states agree that lunatics, criminals and idiots should be debarred from the right of voting. This brings us to the question whether a minimum educational test, involving the ability to read and write, should be adopted in determining the intelligence of a voter. Although a number of states have adopted this principle it cannot be definitely asserted that the knowledge of the three R's is the sole criterion of the right to vote. It has been rightly pointed out that "Where propaganda is used through the press deliberately to misinform the voters, ability to read may even be an obstacle to the forming of sound opinions." So it is not always true to say that universal teaching should precede universal enfranchisement. What is necessary is that the voters should possess that much of common sense and judgment which will enable them to exercise their right intelligently. Education generally sharpens a man's intellect and extends the horizon of his outlook.

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beyond the range of his immediate surroundings. From this point of view, an educational test of the voter may be justified.

### Qualifications of Representatives.

All states prescribe certain conditions necessary for election as representatives. *Firstly*, the qualification of *citizenship* is universally recognised as essential to eligibility to hold office. A person seeking election to the legislature must either be a natural-born or a naturalised citizen of that state. Foreigners are always excluded. *Secondly*, in some states *residence* within the district from which a candidate seeks election is insisted upon. In Great Britain, residence is the sole test of national suffrage. *Thirdly*, *age* qualification is considered by every state as vitally necessary for election to the legislature. This stands to reason because it is only persons of mature age who are fit to be elected as representatives. Generally the age qualification is higher in the case of membership in the Upper House and lower in the case of membership in the Lower House. *Fourthly*, *property* qualification is sometimes necessary for election in some states. In England, property qualification is the distinguishing characteristic of municipal suffrage. With the spread of democratic ideas, property qualification is fast disappearing in modern times. *Lastly*, the holders of certain offices are excluded from eligibility to the legislature.

**Woman Suffrage.** Up to the end of the 19th century, participation in politics was considered to be the monopoly of men alone. Women were deliberately excluded from the right to vote. John Stuart Mill was one of the principal advocates for extension of franchise to women. The arguments that were usually advanced against woman suffrage was not only puerile but one-sided as well. It was argued that the active participation of women in political affairs would destroy their effeminate virtues and introduce discord and dissension in the family. Difference of opinion between husband and wife with regard to their political views might destroy domestic peace. It is still argued that as women are physically less capable and depend on men for their protection, they should not claim the right to vote separately.

*Lastly*, suffrage was denied to them on the ground that majority of women did not want the right to vote.

The old controversy has almost died down now. The legal and moral character of women's right to vote has been admitted on all hands. An occasional exercise of franchise cannot be said either to unsex them or to divert their attention from family duties. Besides, child-bearing and child-rearing should not be considered to be the sole functions of women. Given a proper education and training, women may prove equally fit and problems affecting their interests like maternity benefits or education of women etc. may be solved in a better way by women themselves than by men. The participation of women in political affairs will enable them to safeguard their own interests against unjust class legislation by men alone. The admission of women in the political arena will introduce into public life a healthy influence which may go a long way in improving political conditions in society and ensuring better government.

The right to vote has been conferred on women in almost all the progressive countries of the world. Women have proved their worth in the exercise of civil privileges and also in holding high and responsible offices. Even in the conduct of foreign affairs, women of several countries, notable among them being the Soviet and the Indian women, have played their part. There is no reason therefore why women should be excluded from franchise. Women of several countries and more particularly, the Soviet women played an important part during the Second World War and the services rendered by them during the war have altogether removed the old bias and prejudice against women franchise. Women in England won the right to vote in Parliamentary elections as early as 1918 and the Equal Franchise Act, 1928, placed them on a footing of equality with their male compatriots. The Indian constitution also recognises the right of women to vote provided they are the wives of voters or they themselves possess the necessary property or educational qualifications. The USSR is the most advanced in this respect where all women who have attained the age of eighteen have the right to vote.



In the light of the present position of women franchise, it may be safely asserted that the enfranchisement of women is an accomplished fact and time is not far distant when it will be difficult for any government worth the name to resist the just claim of women to franchise.

**Plural or Weighted Voting.** Plural voting is a system which allows certain persons to receive more than one vote. In those places where property is a qualification of suffrage, persons with sufficient property in more than one electoral district are given the right to vote in each district in which they are qualified. In India, a person can vote in the general constituency in which he resides and he is also entitled to vote as a registered graduate in the university constituency and in the teacher's constituency.

Weighted voting is a variant of plural voting which is based on the assumption that persons who are better qualified to vote by reason of their education or property should receive more votes than those who are less qualified.

The system is justified on various grounds. *Firstly*, it is pointed out that men who are wiser and better educated are naturally expected to make correct choices for public offices. Their votes should therefore be given a greater weight in the choice of public officials than those of the rest. *Secondly*, plural voting enables the propertied class and the educated section of the community to safeguard their interests against those who are less capable but numerically larger. *Thirdly*, as has been pointed out by Mill, it is unjust to regard all votes as equal. Men who are better qualified to vote and who contribute most to the advancement of civilisation and culture should have greater voice in the determination of national policy than that of ordinary men.

But the system is criticised on the ground that it is impossible to find out a practical standard by which votes may be weighted. *Secondly*, property test cannot be justified inasmuch as possession of property is more due to heredity and accident than to personal capacity. Besides, the system of plural voting runs counter to the democratic principle of 'one man one vote' which is the foundation of modern democratic governments. *Lastly*, the system is condemned be-

cause it will give rise to oligarchy, a form of government in which the propertied class will thrive at the expense of the propertyless class.

**Direct and Indirect Election.** Direct election is a method whereby the voters themselves choose their representatives. Direct election is in keeping with democratic principles inasmuch as the electors directly participate in electing members to the legislature. It arouses the political interest of the voters and makes them conscious of their rights and responsibilities. The representatives are also brought into close touch with the voters and this strengthens mutual dependence. But with the introduction of the principle of universal suffrage, increasing difficulty is being experienced in the matter of electing right type of representatives. Besides, the average voter cannot always choose for himself the able man. He is invariably influenced in his choice by interested persons or parties. Thus in order to get rid of the evils of direct election, many writers have advocated the system of Indirect Election.

In Indirect Election, the primary voters elect a number of secondary voters—a body of intermediaries—who ultimately elect the representatives. The President of the USA is indirectly elected by the people. The great merit of indirect election is that it checks passion by limiting the number of electors and thus eliminates the evils of universal franchise. This is supposed to secure election by qualified persons. But the system of indirect election is not in harmony with the principle of modern democracy. It is practically an election by middlemen and as such, the voters lose much of their interest in political affairs. The system is complex and involves trouble and expense. Finally, it encourages corrupt practices at the time of election because the ultimate electoral body being a much smaller one, a candidate may easily influence it by underhand means.

✓ **Electoral Constituencies    Single Member or Multi-Member Constituencies.**

One of the essential conditions for the successful functioning of democratic governments is that the electoral

districts from which representatives are to be elected should be properly organised so as to enable the voters to elect representatives of their own choice. The constituencies should be so formed as to give the voters an opportunity to assess properly the comparative fitness of candidates seeking election from that constituency. This requires that the candidate seeking election and the voters must have intimate knowledge of each other and in fixing the area of a constituency, this factor must be taken into consideration. There are usually two methods, namely the single member constituency and the Multi-Member constituency. According to the former method, the whole country is divided into as many territorial constituencies as the number of representatives to be elected, each constituency returning one member only and each voter having one vote only. Great Britain, U.S.A., and India follow this method. In France, the system is known as *Scrutin d'arrondissement*. According to the latter the country is of course parcelled into a number of constituencies but not into as many as the number of representatives to be elected but much smaller than that and the number of representatives to be elected from each of these constituencies is determined by the size of the constituency, the voters having as many votes as the number of candidates to be elected from each constituency. The system is known as the *General Ticket System* or as the French call it *Scrutin d'Liste*. The General Ticket System or the system of Multi-Member constituency was adopted by many countries including France and the U.S.A., but later on it was abandoned.

### ✓ Advantages and Disadvantages of Single Member Constituency.

*Firstly*, the one great advantage which the system claims is its simplicity and convenience due to which even an average voter finds no difficulty in casting his single vote in favour of a particular candidate.

*Secondly*, the constituencies under this system being smaller the representatives may come in close touch with the voters and *vice versa* and this mutual knowledge of each



greater facilities for the representation of the different shades of opinion prevailing in the constituency

But the disadvantages of the system outweigh its advantages. As the constituencies are large returning more than one member, it is not possible for the ordinary voter to make proper assessment of the comparative fitness of numerous candidates. *Secondly*, in a big constituency, it is not possible for a candidate to come in personal contact with the individual voters and so the advantage of mutual knowledge and understanding is lost in this system. *Thirdly*, the system is really undemocratic in view of the fact that a political party having a bare majority can win the election, thus depriving the minority parties of their legitimate claim to proportional representation. *Lastly*, the system tends to multiply party-groups in the legislature, thus making it necessary to form coalition governments which are inherently unstable and incapable of formulating any policy calculated to promote national interest

A critical examination of the two methods reveals the truth that none of them singly can claim perfection. Dr Garner opines that a combination of both the methods is likely to have advantages over either by itself. In England, in the USA and even in India, where single-member constituency is the rule, provision has been made for multi-member constituencies as well. In India, during the last general election, quite a large number of double-member and three-member constituencies were formed both for election to the House of the People and the Legislative Assemblies of the States. This was done with a view to giving effect to the constitutional provision, viz, reservation of seats for the scheduled castes and scheduled tribes

**Payment to Members.** John Stuart Mill condemns the system of payment of remuneration to members of the legislature. In his opinion, the system of payment will make the legislative business a source of income. Mill is further of opinion that payment of a petty sum is likely to attract only greedy and second-rate men to legislature as able and conscientious men will consider it beneath their dignity to accept petty sums. Moreover, the system of payment is likely to

increase the expenditure of the government, leading to additional taxation

But in modern times, the outlook has changed and if J. S. Mill would have been alive now, perhaps he would have supported the system of payment to members. The function of a modern legislator is not only complex but is also of a highly exacting nature. If the legislator is to discharge his duties conscientiously, he will have to devote the greater part of his time, attention and energy to legislative business. He has a duty not only to his own constituency but also to the country at large. He has to attend meetings, travel from place to place for seeing things personally and discussing matters with all parties concerned. Only when he is well-posted with facts that he can contribute his opinion to a proposal. Considering the magnitude of the task and the responsibility attached to it, it is highly desirable that members should be paid. In modern times, most of the legislators come from the Labour and Socialist parties and unless they are paid, it is not possible for them to render gratuitous service to the state. Besides, if the members of the executive and the judiciary be paid, there is no reason why the members of the legislature should not be paid especially in view of the fact that it is the most important organ of the government. The system of payment, in spite of certain defects, has now received almost universal support. In England, the members of the House of Lords are not paid but those of the House of Commons are paid.

**Functions of a Representative : His relation with his Constituency.** There is a good deal of controversy regarding the proper functions of a representative. The question is—should the representative act strictly in accordance with the instructions given to him by his constituency or should he act according to his own judgment, guided only by considerations of public welfare? There is also the third view that as the modern representative is the spokesman of a political party, he is bound by the decision of the party. His primary allegiance is to the party and not to his constituency or to the country at large. Thus an elected representative is faced with

conflicting claims of allegiance which reduces him to an embarrassing position.

Formerly, the representative was looked upon as the agent of a particular constituency or of the class which chose him and thus he was bound by instructions from those whom he represented. But the idea of representation has undergone important changes in modern times. Representation is now carefully distinguished from delegation. Delegation implies that the delegate should act according to the will of the governed, but representation means the carrying out of the will of the governed. Representation requires the fulfilment of their will. The representative is elected not so much for his individual capacity, character or views as on the ground of the policy which he pursues or upholds. The voters also vote for a particular policy and not for any individual. His vote indicates his attitude towards a particular policy, not towards individual measures. A representative, therefore, need not receive any instruction from his constituency, so long as he is faithful to the cause which he upholds.

Besides, the modern representative is regarded more and more as a representative of the entire nation with full freedom of thought and action. He may be elected from a particular territorial constituency but that does not mean that his sole obligation is to the territory or group which he represents. The modern theory of representation is that a member of a legislature represents the whole community. He is elected because he is supposed to be a man of superior knowledge and more familiar with public affairs than an average voter. He may have occasional exchange of views with his constituency but he should not be bound by their instructions. The views of his constituency should always be given proper consideration but the decision must be made by the representative himself in conformity with the best interests of the nation. He should never surrender his right of independent judgment even at the risk of not being re-elected. He is paid out of the national exchequer and not by his constituency and therefore he has no special obligation to his constituency. Edmund Burke expressed his

views on the office of the representative when he addressed the voters in Bristol in 1780. He said, "You choose a member indeed, but when you have chosen him, he is not a member of Bristol but he is a member of Parliament." In another place, he expressed similar views "The representative owed his constituency both industry and judgment, and when he sacrificed these to the opinion of the constituents, he betrayed rather than served them."

**Representation of Minorities.** One of the problems with which democratic governments are confronted is how to secure adequate representation of minorities in the legislature. While majorities have an inherent right to rule, the minorities have equally solemn right to be heard. No real democracy is therefore possible without it. Various devices have been suggested to guarantee adequate representation to minorities. Mill advocated a system of *Proportional Representation* which seeks to safeguard the interests of minorities in the legislature by enabling the minority of voters to elect a minority of representatives. Under this system, every political party can secure representation according to its voting strength. Thus if two-thirds of the voters vote for one party and one-third for the other, it is just that two-thirds of the representatives should go to the majority and one-third to the minority. The system has the great merit of securing representatives to all parties and sections, however small they might be. It is thus based on really democratic principles.

**Forms of Proportional Representation.** There are two variations of proportional representation, viz., *Hare Scheme of single transferable vote* and the *List system*.

The system is known as Hare Scheme as it was propounded by an Englishman named Hare. It is otherwise known as the *Andr   system* after the name of one Andr   who introduced it in Denmark. Under this system, the constituency is a multi-member one, returning up to 15 members. A candidate, in order to be declared elected, is required to secure the 'quota', i.e., a minimum number of votes. The quota is ascertained by one of the two methods, viz., the number of votes cast is divided by the number of



representatives to be elected, or, in order to make the result more accurate, by one more than the representatives and the quotient is also increased by one. The quota required for the election of any candidate is determined in accordance with the following formula

$$\frac{\text{Valid votes}}{\text{Number of candidates} + 1} + 1 = \text{Quota}$$

Each voter can cast one vote only but he is allowed to signify his preferences by placing the numbers 1, 2, 3, 4, etc. against the names of candidates. At the first counting of votes only voters' first choices are counted and as soon as a candidate secures the quota, he is declared elected. No more votes will be counted for him and if there be any surplus votes for him, they will be transferred to other candidates in the order of preferences, till the required number of persons have been elected. Votes it should be remembered, are transferred in accordance with the order of preference indicated not only from candidates securing a surplus but also from those who have secured few votes and consequently have no chance of being elected at all.

The system secures representation of every minority group in proportion to its number. The voter is assured that if the candidate of his first choice do not require his vote, his second or other choices will gain by his vote. He knows that his vote will not be wasted. The system also ensures the election of better type of men and thus tends to elevate the character of the legislative body.

Complexity is the greatest drawback of the system. It is also expensive and not intelligible to the ordinary voter.

**List System.** According to this system, each party offers a list of candidates and each voter is allowed to cast as many votes as there are seats to be filled but cannot cast more than one vote for one candidate. The electoral quota is determined, as in the Hare Scheme, by the total number of votes cast divided by the number of seats vacant. The number of seats to which a party is entitled is decided by total votes secured by a party divided by the electoral quota. The deficiency, if there be any, is made up by the party having the maximum fractional quota.

The system recognises the party system and provides for proportional representation to a very large extent. It is less complex and less expensive. But it tends to increase party influence and minimise the importance of individual candidate. The system had a trial in France but was abandoned in 1927.

**Limited Vote System.** Under this system, voters in each constituency are allowed fewer votes than there are seats to be filled. Thus if there are three seats in a constituency, each voter shall vote for one or two of them. The minority parties are therefore assured of some seats in the assembly. The defect of the system is that it can give only proportional but not adequate representation to minorities, among whom the smaller minorities may not get any chance at all.

**Cumulative Voting.** This method allows a voter to cast as many votes as there are seats in the constituency with the right to distribute his vote according to his will. He may cast all his votes in favour of one candidate or give two votes to one and one vote to another. Thus the method enables minorities to secure election of candidates by concentrating their votes on one or few candidates in each constituency.

The system does not ensure proportional representation to minorities. It leads to huge waste of votes as a more popular candidate may get more votes than necessary for his election, while a less popular one fails to secure enough votes.

**Second Ballot System.** Another scheme for securing an absolute majority in election is the second ballot. When more than two candidates contest for one seat, the votes are divided and the candidate securing a relative majority of votes among the three or more candidates is usually elected. Thus in a constituency it might happen that a candidate securing less than half the total number of votes—say, 1,900 out of a total of 5,000, may be elected while the remaining two candidates may secure 1,700, and 1,400 votes respectively. The representative in such an election represents only a minority of voters. In such a case, the candidate securing the minimum number of votes is asked to withdraw his candidature and a second ballot is held between the other two candidates. The votes cast for the retiring candidate will now be redistributed.

between the two remaining candidates and the candidate securing an absolute majority of votes is elected

The system increases the election expenses of candidates and interposes delay in the election of representatives

**Minority Representation in India.** The existence of a large number of minority groups, mainly religious, made the problem of minority representation in India, a difficult and almost a baffling one. The two major communities in India namely, the Hindus and the Muhammadans, were not able to solve the problem to the satisfaction of the parties concerned. In the absence of a compromise, the British government forced upon them the system of communal representation through separate electorate. The system was introduced in India for the first time by the Morley-Minto Reforms Act, 1909. It was then confined only to the Muhammadan Community. The Montague-Chelmsford Act, 1919, extended it to a variety of directions by making provision for the separate representation of the Sikhs, the Indian Christians and other classes. The Government of India Act, 1935, of which the 'Communal Award' by Prime Minister Ramsay Macdonald, was an integral part, further extended it to other classes, viz., the Depressed Classes. The provision for the separate representation of the depressed classes, had it been accepted unopposed as in the case of the Muhammadans would have cut at the very root of the unity of the Hindu Society. But thanks to the Great Mahatma that his resolve to fast unto death prevented the disintegration of the Hindu Society. An agreement reached at Poona between the leaders of the Caste Hindus and the Depressed classes modified the provisions of the award. Depressed classes were given more seats on the basis of joint electorate with reservation of seats.

The method adopted in India to secure the representation of minorities was unique in character. It was introduced because an influential section of the Muhammadans demanded it, although the authors of the system were at first opposed to it on principle. Separate electorate did not exist anywhere except in India. The proposal for special representation in the legislatures by certain minorities in Europe was

turned down by the League of Nations after the conclusion of the World War I. The system when introduced produced its disastrous effect on the national life of the country. The system is both anti-democratic and anti-national. It cuts at the very root of nationalism by driving a wedge between different communities. Under this system, group or 'sectarian' interest is pressed for and promoted while national interest is allowed to suffer. The different groups in the state, in seeking their own sectarian interests, fly at one another's neck. It tends to perpetuate communal conflict and breeds self-seeking leaders. Merit is no longer considered as a test of fitness for public services. Vacancies in public service are filled up on the basis of communal ratio and thus it impairs the efficiency of administration. The system is incompatible with the principle of responsible government inasmuch as decisions on questions of public policy are not made from the national point of view through discussion and compromise. The legislative assembly loses much of its importance as the system restricts the voter's choice to a narrow circle namely his own community. The system is also antagonistic to the interests of the minorities themselves. A minority which enjoys special privileges will have little urge to shake off its inferiority complex in order to gain an honourable position in the community as a whole.

The only argument that may be advanced in favour of the system is that it can safeguard the interests of the minorities in the presence of a hostile majority. Joint electorate with reservation of seats for the minorities is considered to be the best method. The New Constitution of India has abolished the system of communal representation through separate electorate and has introduced joint electorate with reservation of seats for members of the scheduled castes and tribal people and that also to be in force only for the next ten years and to be extended thereafter, if necessary. It is a move in the right direction.

**Functional or occupational Representation.** Closely allied with the problem of minority representation is the question of the representation of interests which is gradually coming to the forefront. The existing system secures representation

of minorities which are politically organised but it cannot secure the representation of various class and interest to the state. The idea is gradually gaining ground that representation in order to be real must be on a functional basis. A legislative assembly should represent the various shades of opinion such as religious, social, economic, cultural, professional and similar other organisations of a non-political nature. The question, therefore, is what should be the basis of representation. In almost all the countries, the usual basis of representation is territory, i.e. people are asked to elect their representatives on a geographical basis. The voters of a particular territory,—a ward, a district, a county or a division,—are given the right to choose their representative in the legislature. All the voters of a constituency vote together, no matter, what their avocation may be. Thus a member of the West Bengal legislative assembly may represent a district in which there are men of different occupations of life, such as cultivators, miners, railwaymen, teachers, physicians and others. The territorial system of representation assumes that a man's locality-consciousness is more important than his class-consciousness and naturally therefore the voter's interest is influenced more by the place of residence than by the occupation in which he is engaged. Hence it is presumed that a physician is quite fit to represent the interests of other classes like peasants, teachers and others provided he lives in the same electoral district with them. But a physician will not be considered eligible to represent if he lives outside the constituency.

In sharp contrast to the territorial system of representation stands the Soviet system which seeks to establish a vocational basis of representation. Persons of different occupations vote separately although they may live together in one district. Each of the groups elects representatives from among its own class. Thus an iron-worker in the Soviet Union does not represent the town from which he happens to come but represents a particular occupation irrespective of his residence. The underlying principle of the Soviet theory of representation is that a man's class-consciousness is more important than his locality-consciousness and therefore the attitude of the voter on questions of public policy is largely

determined by the occupation of his life. According to this principle, a physician is not considered fit to represent the interests of other classes with whom he might live in the same constituency. There is, no doubt, some truth in the assertion that under modern conditions of life, a man's class-allegiance usually proves far stronger than his allegiance to the place of his residence. In forming his views on public policy, a person is more often guided by the interests of his social and economic fellowship. Besides, it is not always possible for an individual to understand the viewpoint of others when they belong to different occupations of life. The interests of his group may at times run counter to those of other groups. It is therefore far better that a person should represent only those who pursue the same occupation in life. The above analysis therefore suggests that occupation is a better basis of representation than territory. Though not accepted in principle, the system is gradually creeping into the electoral systems of other countries. In England, the educational interests, i.e., the universities had special representation in the legislature. The system found place in the organisation of the Indian legislatures, especially in the provincial legislatures in the form of special representation of universities, landholders, labour, commerce and industries, etc. It had a special message for India inasmuch as it was likely to counteract the tendency to extreme communalism in Indian politics.

But it is pointed out that it is not always true to say that men of the same occupation will think alike on questions of public policy. Even if they do so, their grouping in the same constituency should not be allowed or encouraged. If the class-consciousness of a person is encouraged, it is likely to undermine the very basis of political organisation. A man is a citizen first, peasant or physician afterwards. The vocational basis of representation also militates against the true theory of representation which regards a representative not merely as the representative of a district which he represents, but the representative of the entire people. The representative is paid out of the national treasury by the whole people and as such his duty is to promote general rather than any particular interests. The system tends to circumscribe the horizon

of the representative to the limited sphere of his group and multiply party factions in the legislature. It is likely to increase the spirit of antagonism between the different classes with the result that the legislature is reduced to the position of a debating society with considerable loss of its prestige and efficiency

The legislature, therefore, should not be composed exclusively on a vocational basis of representation. Representation should be accorded on a territorial basis but provision should be made for the adequate representation of different classes in order that their interests do not suffer. This may be done by providing for the separate representation of these classes and interests in the legislature or by setting up consultative councils on the pattern of the German Economic council which might be consulted from time to time for making laws affecting the interests of those special classes

**Essentials of a Good Electoral System.** The most important requisite of a good electoral system is to have a body of good citizens who regard voting more as a sacred duty than as a right. The success of a democratic government depends, in no small measure, on the character of its public officials and the choice of the public officials must be made in such a way that it ensures the right man in the right place. It is therefore the duty of the voters to choose the best men for public offices. In giving their votes, the voters must not be influenced by any other considerations save and except the interest of the country. It is only honest and conscientious citizens who can ensure the stability of a democratic government. *Secondly*, direct election is another important essential of a good electoral system. Direct election is the only method by which the responsibility of the representative may be easily enforced to those by whom he is elected. The system secures co-operation between the rulers and the ruled and thus ensures good government. *Thirdly*, secret voting is preferable to open voting which prevents the voters from exercising their franchise freely. *Fourthly*, the electoral districts should be, as far as possible, equal in respect to the number of voters. *Fifthly*, political training and education of the voters in public affairs is another important condition necessary to a

good electoral system *Lastly*, purity in election must be enforced at all costs. In the last analysis, it is evident that the success of political institutions depends on the character of the citizens and if the citizens are inspired by a high civic ideal, it is only then that democracy may have a smooth sailing.

### Functions of the Electorate.

The word *Electorate* is comparatively of recent origin as under absolute monarch and dictatorship, the entire population of a state irrespective of their age, sex or social status were silent spectators of the great game of politics. The nature of the then state becomes palpable from the utterance of the French King Louis XIV—"I as the State" The people had practically no share in the administration of the country.

But with the gradual increase of political consciousness of the masses, the idea gained ground that all governments are of the people for the people and by the people. As soon as this idea was firmly established, dynastic states were transformed into democratic states and the *demos* began to control the affairs of the state which was considered to exist for them. So the electorate, i.e., that portion of the community which is mature in age and otherwise not considered unfit, has a great part to play in the life of the modern state. As a matter of fact, the very existence of the state and the due discharge of its functions depend largely on the efficiency of its electorate who can make or mar the future of the state.

*Firstly*, the electorate is to choose members of the legislature and the executive. This is regarded as the most important function of the electorate who determines as to who should rule and the democratic character of the state can be preserved only by a class of rulers who are not only efficient but also responsible to those by whom they are elected.

*Secondly*, the electorate should always watch the activities of the government lest it might turn into an oligarchy or dictatorship. It should hold the executive and the legislature to account in case they wantonly flout public opinion. The electorate exercises control over the government directly.



through devices like frequent election, the referendum, initiative and recall and indirectly, through the press, platform and lastly, through the right of revolution. This, of course, requires an alert and intelligent electorate.

*Lastly*, modern democracies are governments by parties. It is the duty of the electorate to examine the policy and programme of each and every party and to give its support only to that party whose political programme is calculated to promote the best interests of the nation. Hence it is said that an alert and intelligent electorate is the first requisite of a democratic government.

## SUMMARY

I *Universal Suffrage* The right to vote is regarded as the foundation of representative democracy. The modern tendency is to confer the right to vote on all citizens who possess the necessary qualifications for exercising the right for public good. Universal suffrage, in practice, means restricted suffrage as every state exclude minors, lunatics, criminals, idiots, and such others.

II *Woman Suffrage* The opponents of woman suffrage argue that the home is the proper sphere of woman's activity. Participation in politics will destroy their feminine virtues and will create dissension within the family. The advocates of female franchise argue that the exercise of voting right will enable women to safeguard their own interests against unjust laws by men alone. It will improve political conditions in society. Many states like England, Soviet Russia and others have conferred the right on their women, many of whom have made their mark in the political life of the country.

III *Direct and Indirect Election* In direct election, voters directly choose their representatives. In indirect election, voters elect their representatives indirectly through middlemen voters. Direct election induces the citizens to take interests in political affairs and makes them conscious of their rights. But direct election may not ensure the election of better type of representatives. Indirect election secures the election of better type of men but it is undemocratic and the voters under this system lose their interest in political affairs. It also encourages corrupt practices.

IV *Plural or Weighted Voting* Plural voting allows a person to cast more than one vote on the basis of property or educational qualification. The system of weighted voting also allows a person to receive more votes by reason of his higher

qualification Although the system attaches importance to quality it is not in keeping with democratic principle

V. *Payment to Members* Formerly, payment to legislators was looked upon with disfavour The modern practice is to pay remuneration to members as legislative business has come to be a whole time job of the legislators who have to devote much of their time and energy to legislative work

VI *Functions of a Representative* A representative is no doubt elected by the voters of a particular constituency But he should not be regarded as the representative of that particular constituency alone bound solely by the instructions of his constituents The modern idea is that his first and last duty is to the nation although he may have occasional consultations with his constituency

VII *Representation of Minorities* It is an essential condition of democracy that all classes and interests should be adequately represented in the legislature The methods suggested or adopted for the adequate representation of minorities are (i) Hare Scheme, (ii) Limited Vote plan, (iii) Cumulative voting etc

VIII *Minority Representation in India* The different religious minorities in India were represented in the legislature through separate communal electorate The system is anti-national and anti-democratic

IX *Functional Representation* It is desirable that the various classes and interests should be represented in the legislature Functional representation allows each separate group of occupations to be represented separately by the members of their own group The system is likely to multiply parties, aggravate rivalry between numerous groups with the result that national interest will suffer

X *Essentials of Good Electoral System* The first thing necessary for a good electoral system is a band of honest and conscientious citizens who can exercise their right to vote properly Other requisites are direct election, secret voting and purity in election

#### *Functions of the Electorate —*

The electorate had no function in the days of dynastic rule The advent of democratic government conferred great powers on the people for whom the state is believed to exist

(i) The electorate elects the rulers and the democratic character of the state depends on the type of men whom it elects

(ii) The duty of the electorate is also to keep an eye over

the activities of the government and to enforce responsibility so that they may not act contrary to the will of the people

(iii) Lastly, the electorate after careful considerations of different party programmes, is to decide as to which party should rule

### QUESTIONS

1 State the case both for and against Female Suffrage and give your own opinion (C U 1929 )

2 What arguments of political theory would you use in supporting or rejecting a communal representation? (C U 1931 )

3 Describe the functions performed by the electorate in a modern state How were the constituencies organised in West Bengal for the recent elections? (C U 1952,)

4 To what extent, if any, should a member of a legislature be bound by instructions of his constituents? [Gauhati (Hons ) 1948 ]

5 Distinguish between territorial representation and functional representation Which of them would you recommend, and why? (C. U 1960 )

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## CHAPTER XVI

### THE EXECUTIVE AND THE JUDICIARY

#### *References*

Garner—Political Science and Government,  
Chs XXII-XXIV.

Bryce—Modern Democracies, Vol II, Chs LXVII,  
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ment, Vol. II, Part VII.

**The Executive : Its Meaning.** The term executive denotes all those executive and administrative functionaries in a state including everybody from the chief executive head down to the police constable who are concerned with the execution of law. In a wide sense, therefore, the term includes all the governmental agencies with the exception of the legislature and the judiciary. In a narrow sense, the term denotes only the supreme executive, may be an individual or a body, who is concerned with the formulation of politics and supervision and control of other subordinate departments which carry out the will of the state.

**Classification of the Executive.** The executive head may either be *hereditary* as in Great Britain or *elective* as in France. In some states, there is a *nominal* head of the executive who reigns but does not govern. The British King is the titular head but the *real* executive is the cabinet which exercises the legal powers of the king. When the executive is responsible to the legislature, usually to the lower House, the executive is called *Parliamentary* executive. When the executive is independent of the control of the legislature, it is called *Non-Parliamentary* executive. The executives in England and in France are of the Parliamentary type while the American executive represents the latter type. The executive authority is generally reposed in a single hand. A single person or a very small body of persons is entrusted with executive functions. When the final control is vested in one

individual or in an aggregate body of individuals as in England and France, the executive is a *Single* one. But the executive in Switzerland is *Collegial* in form. The constitution of the Swiss Republic vests the executive authority in a Council of seven persons with a chairman at the head who has no more actual power than his colleagues. The final control lies not with one person but with a council of several. Such executive is called *Plural executive*. The efficiency of the executive depends on its singleness of purpose, promptness of decision and action and secrecy of procedure. A single executive is therefore better suited to discharge executive functions than a plural one with variety of views. Plurality implies division of executive power which leads to its enfeeblement. It also destroys responsibility. Although the Swiss system works smoothly in Switzerland, the principle of plurality proved a failure in other countries.

**Mode of Choice of the Executive.** There are four different methods of choosing the executive. *Firstly*, the executive may be a hereditary monarch who is a mere figure-head in the government. This type is fast disappearing from the world. *Secondly*, the executive head may be directly elected by the people. The Weimar constitution of Germany provided for the election of the German President by direct popular votes. The system is in keeping with true democratic principles. It stimulates the interests of the people in public affairs and affords a means of political training to the people. But the most serious drawback of the system is that the masses in a big country do not generally possess the competence to choose a candidate for so important an office. *Thirdly*, the chief executive head may be indirectly elected by the people as in the USA. Although indirect in form, the elective scheme for choosing the American executive has come to be almost direct in fact. Indirect election has the merit of avoiding tumults of direct election. It also leads to the choice of better type of men by restricting the immediate selection to a small body of capable representatives. But the system has failed altogether of its objects under the influence of political parties. The electors have now become party puppets, having no discretion of their own in choosing the executive.

*Fourthly*, the chief executive may be elected by the legislature as in France, Switzerland, and in India. Mill was an advocate of this method. Election by the legislature is regarded by many as the best method in view of the fact that the legislature, more than the masses of voters or intermediary voters, is the most qualified to choose a right man for so high an office. But the system has been criticised on the ground that it violates the principle of separation of powers. Under this system, the chief executive may be reduced to a position of dependence on the legislature which is likely to impair its efficiency and independence.

**The term of the Chief Executive.** The executive is entrusted with the task of maintaining internal peace and preventing foreign aggression. It must therefore be made so stable and strong that it can pursue a definite policy in order to ensure steady progress of the nation. The policy pursued by the executive in regard to internal and external affairs depends, to some extent, on its duration, *i.e.*, how long the executive continues in office. In practice, the term of the executive ranges from two years to seven years. If the term is too short as in the case of many states in the USA, the executive will feel little inducement to do any positive good by exposing himself to any great risk. On the other hand if the term is too long, there is the danger of abuse of power by the executive without any means of enforcing responsibility upon him. The term of the executive should therefore be of such duration as will enable him to translate his policy and programme into action, at the same time reminding him of his sense of immediate dependence on public opinion. A four-year term has been suggested by many as the proper tenure of office of the executive.

**Functions of the Executive.** The executive power may be broadly classified under six heads.

(1) *Diplomatic power* It relates to the conduct of foreign relations including the power to negotiate and ratify treaties, international agreements and to appoint and receive diplomatic agents. The treaty-making power, however, does not belong wholly to the executive as the legislatures of many states retain some amount of control over it. Thus in the

U.S.A., all important treaties negotiated by the President, are subject to ratification by the Senate. In France, the legislature can approve or disapprove a treaty as a whole but cannot amend it. In Great Britain, however, Parliament has no control over the treaties made by the executive except where legislation is necessary to make them perfect or to enforce them.

(ii) *Administrative power* This has to do with the execution of the laws and the administration of the government. The duty of the executive is to maintain law and order within the country and as such it is vested with a wide power of supervision and control so that laws are properly enforced. It has the power to appoint, direct and dismiss its subordinate officials. In some states as in the U.S.A., the power of the chief executive in matters of high appointment is limited by the requirement that all such appointments must be ratified by the Senate.

(iii) *Military power* It relates to the prosecution of war, the supreme command of the army and navy and other military forces of the government. In Great Britain, the executive has the right to declare war but it is the legislature which provides the means of prosecuting the war. In the United States, the concurrence of the Congress is necessary for the declaration of offensive wars.

(iv) *Judicial or Pardoning power* This relates to the power to grant pardons to persons convicted of crime. The right of clemency is by common consent regarded as a necessary part of the executive function. Considerations of humanity and sound public policy require that the executive should exercise the right of pardon. It also includes the right of amnesty especially in times of internal disturbances.

(v) *Veto power* The executive in some states possesses veto power, i.e., the power to disapprove acts of the legislature. This power is generally vested in the executive in order to prevent the legislative tyranny of the law-making organ. The veto power may take any of the three forms, namely, *absolute*, *qualified* and *suspensive*. The executive is said to possess absolute veto when it can turn down any law passed by the legislature which cannot restore it by any means whatsoever.

The Governor-General of India under British rule, was vested with this power. The British king still possesses this power theoretically, but it has become obsolete now because of long disuse. The qualified veto means a veto which is not absolute but the legislature can restore the measure by a different process, say, by passing it again by a two-thirds majority even when it has been disapproved by the executive. The President of the U.S.A. can exercise this power but if the vetoed bill is passed by the Congress by a two-thirds majority, it will become an act in spite of the dissent of the President. The suspensive veto is one where the executive may disapprove and the legislature may be compelled to reconsider the measure passed by it and turned down by the executive. But if the legislature pass it again by a simple majority, it will become an act notwithstanding the dissent of the executive. The New Constitution of India provides that the President, instead of giving assent to a bill duly passed by Parliament, may send the bill back for reconsideration. But if the bill is passed by the legislature for the second time, the President must not withhold his assent therefrom.

(vi) *Legislative and Ordinance-making power* The legislative power of the executive is not the same in all countries. In the Cabinet form of government, the executive is a part of the legislature and directly participates in legislation. In addition to its power of summoning and closing the sessions of legislature, the executive in England are also Parliamentary leaders who initiate bills and pilot them through the course of legislation. The executive, in the Presidential system, has ordinarily nothing to do with legislation but it exercises some amount of indirect influence over legislation in various ways. The executive in almost all countries is also vested with the power of promulgation of laws.

The executive in modern states is vested with the power of issuing ordinances which include the power of the executive to issue orders or rules for the guidance of the conduct of subordinate officials and also for supplementing and filling in the details of existing statutes. In the U.S.A., the ordinance-making power can be used by the executive for administrative legislation and not for supplementing



statutory laws. In England, ordinances or 'orders in council' are very extensively issued to deal with social problems like public health, education, etc. The practice of delegating the power of minor legislation to the executive is steadily increasing now-a-days in Great Britain.

### **Relation between the Executive and the Legislature.**

Government, being an organic unity admits of no absolute separation of powers. The work of the one is supplemented and supervised by the other. Generally speaking, the relation between the two may take any of the four different forms. In the present parliamentary system of Great Britain, the initiative in legislation, finance and formulation of policies, lies in the hands of the cabinet which is the Steering Committee of Parliament. According to the French model, which is also of the Parliamentary type, the executive is subordinate to the legislature. French ministry is notoriously unstable and this instability of the French executive is partly due to its complete dependence on the legislature not only for the approval of its policy and action but also for its very existence. In England the House makes the Ministry but the Ministry can unmake the House. In France, the House unmakes the Ministry. The USA system is marked by a complete separation of powers between the executive and the legislature, there being practically no constitutional relation between the executive and the legislature. Of course, there are some points of contact between the President and the Upper House of legislature. Lastly, the Swiss system of government has combined the advantages of the English system with those of the USA system. The Swiss executive is peculiar in the sense that it is collegial, enjoys a fixed term and does not go out of office even if its policies are disapproved by the legislature.

### **Executive Leadership in Modern States.**

The executive in modern states occupies such an exalted position that it has reduced the other two organs of the government to a subordinate position. The theory of equal balance of power between the executive legislature and the

judiciary is no more applicable to the governmental organisation of a state in view of the fact that the executive has developed into a multi-functioning organ which performs not only executive but also, at the same time, legislative and judicial functions

In England, legislative leadership is a monopoly of the Cabinet which determines, initiates, pilots, bills and makes them laws. In the U.S.A., the President, the executive head, influences legislation in an effective way by his constitutional right to send message wherein drafts of bills may be inserted, to recommend measures, to convoke special sessions of the legislature and lastly to veto bills. He may also impress upon the voters his own views by effectively appealing to their sentiments through the press, radio and the modern device of television. He has also considerable patronage at his disposal by means of which he can manage to influence the voters. Besides these, the executive in almost all countries is vested with other subsidiary powers of legislation in the form of ordinances, decrees and regulations.

Legislation by the executive is considered as a lesser evil than the investment of the executive with judicial power. The executive controls the judiciary in the sense that judicial appointments are mostly made by the executive and judicial decisions are enforced by it. Appointment of the judiciary by the executive, though held by Dr. Garner as the best method of judicial selection, is not above criticism. The judiciary in such cases may not be altogether free from the influence of the party in power which makes such appointment and as such judicial decisions may be vitiated by considerations of party interest. This has happened in the U.S.A. The special power of granting pardon and reprieves, the existence of court martial and the administration of the *haut administratif* are examples of judicial powers exercised by the executive.

Now the question is how far this investment of the executive with almost dictatorial powers over other organs of the government is compatible with, and conducive to, the smooth working of a popular government. A popular government is one in which the people have not only the power to choose their rulers but also the power to compel the

rulers to consider and to give effect to popular demand. The executive generally consists of seasoned diplomats of ripe experience and as such there can possibly be no objection if the executive is vested with the powers to determine, initiate and guide legislation but power, it should be remembered, tends to corrupt those who wield it and therefore it should be effectively safeguarded. The ultimate power of making and unmaking laws should never be delegated to the executive which, by the very nature of its composition and function, is quite unadapted to the task of the legislature. It is wholly unsuited to the task of the judiciary because it lacks the training and temperament of the judiciary. Of course, the complex mechanism of a modern government consequent upon an extension of its activities to a variety of directions makes it necessary to have a co-ordinating, unifying and controlling authority but that does not mean that the executive should be vested with overriding power—power which enables it to have its own way irrespective of the decisions of the other organs. The French people have suffered for the weakness and instability of their executive but still they have not given a *carte blanche* to the executive. The Swiss system of the executive is superior in the sense that it is more stable but at the same time it has been effectively kept in check by the legislature which, in its turn, is subject to the control of popular referendum, initiative and recall. The constitution of the USA provides for one effective check upon the power of the executive and that check is judicial review which has in the past curbed the monarchical ambitions of many a President.

The growing power of the executive is considered as a serious menace to the successful working of a democratic government and if democracy is to be made safe for the world, the growing power of the executive must be curbed and this can be done only by increasing popular control and popular supervision over the affairs of the government. An alert and intelligent public opinion is therefore the best safeguard of executive tyranny.

✓ **The Judiciary.** There is a Duality theory and a Trinity

theory The advocates of the Duality theory refuse to recognise the judiciary as an independent organ of the government rather they look upon the judiciary as an administrative branch of the legislature. According to them the legislature and the executive are the two principal organs of the government and the judiciary simply administers the laws passed by the legislative organ. But this view is not tenable because the judiciary not only applies laws but also interprets it and in the act of interpretation, it also supplements existing laws In federal governments the judiciary acts as a bulwark of individual liberty by keeping in restraint the activities of the executive and the legislature within the bounds of the constitution

**Its functions.** The main function of the judiciary consists in the application of laws to particular cases Judicial tribunals are agencies for the settlement of disputes between individuals and between them and the state and for the trial of persons accused of crime But this is not the whole function *Secondly*, in applying laws to specific cases, the judiciary interprets the laws *Thirdly*, the judges are to try various cases, some of which may not be covered by existing laws In such cases, the judges are to try those cases according to the principles of justice, equality and common sense Thus in the act of application and interpretation of law, the judges make precedents which are followed in subsequent cases In this way, the judiciary supplements the existing law *Fourthly*, in some federal governments as in the USA, the judiciary possesses the competence to declare the laws passed by the legislature as unconstitutional Besides these, the judiciary performs a variety of miscellaneous duties which are not of a judicial nature, such as, granting of licences, granting of probate, administration of estates of the deceased, appointment of receivers, giving opinion, issuing injunctions to prevent the commission of wrong and injury, etc

The judiciary also acts as the guarantor and protector of the rights of citizens It is said that law is the condition of liberty Law alone is not a sufficient condition which can be created only by the judiciary by the proper application

and interpretation of law. Constitution of every country embodies a long list of rights of the citizens, but a mere enumeration of the rights is meaningless unless the judiciary helps the citizens to enjoy them.

✓ **Qualifications of Judges.** The function of the judiciary is wholly different from that of the legislature and the executive. Their special functions are such that the judiciary should possess in a special degree certain qualifications which are not considered necessary either in the executive or in the legislature. The judges, *firstly*, must possess sound knowledge of law which they are to deal with. *Secondly*, they must be impartial. They should not be amenable to any outside influence. *Thirdly*, it is necessary that the judiciary in a state should be absolutely independent from extraneous influence.

**Independence of the Judiciary.** The expression 'independence of the judiciary' means that the judges should possess in a special degree impartiality, integrity, dignity and above all, independence of judgment. The necessity of securing the independence of the judiciary is not difficult to ascertain. Judicial independence is indispensable in order to secure an impartial trial of the accused. The judges are to protect the innocent from injury and usurpation. *Secondly*, the judges are to try government officials for their unlawful acts and if they are not impartial and fearless, the primary objects of the state, viz., creation and preservation of individual rights will not be realised. An independent judiciary is thus the bulwark of individual liberty. *Thirdly*, independence of the judiciary is essential in order to protect the constitution and laws against the encroachment of the contending parties in countries with rigid constitutions. Where the judiciary is weak 'the government must either perish by its own imbecility, or the other departments of government must usurp powers, for the purpose of commanding obedience, to the destruction of liberty'. On the other hand, 'there is no better test of the excellence of a government than the efficiency of its judicial system'.

The independence of the judiciary depends, *firstly*, on the mode of appointment of the judges, *secondly*, on the

tenure of their service, and *thirdly*, on the adequacy of remuneration paid to them. The practice followed in different countries in the matter of appointment of the judiciary is either election by the legislature (Switzerland), or direct election by the people (majority of American States) or appointment by the executive (England, France and India). Choice by the legislature makes the judiciary dependent on the favour of the legislature and they are liable to be influenced by party clique and interest. Election of judges by popular votes is looked upon with great disfavour as the system leads to all sorts of abuses and corruption due to party intrigue. Moreover, judicial independence and integrity will suffer considerably under this system. The elected judges might be tempted to favour those who voted for them and are thus apt to mould their judicial conduct in order to secure re-election. The method followed by many of the modern states is appointment of the judiciary by the executive, although the system is not altogether free from defects. This method will at least place the judiciary above party politics. Dr Garner is of opinion that appointment by the executive possesses merits which no other system possesses. But once appointed, the judges should be independent of the control of the executive and shall hold office for life or during good behaviour. If the judges are safe as regards their tenure of service, they will have no reason for being unmindful of their responsibility in their anxiety for winning favour from those who appoint or dismiss them. The judges should be given a high salary in order to enable them to lead an honourable life so that they may not yield to the temptation of bribery.

In England, the independence of the judiciary was secured by the Act of Settlement, 1701. The judges are appointed by the King and hold office during good behaviour. They can be removed from office only on a joint address presented to His Majesty by both the Houses of Parliament. Judges, in France, are appointed by the executive not from the bar as in England, but on the result of a competitive examination. They are removable only by the highest court of appeal, namely, the Court of Cassation, acting through a

committee of seven judges. In the U.S.A., the judges of the Federal Court are appointed by the President with the approval of the Senate. But they cannot be removed during their tenure of office except by an impeachment. The New Constitution of India provides for the appointment of Judges of the Supreme Court and of High Courts by the President of the Republic in consultation with the Chief Justice of the Supreme Court and if necessary in consultation with other judges, but the President is not bound to accept their advice in the matter of appointing judges. The judges can be removed from office only with the consent of the President when such consent has been given by the President to a proposal of removal passed by a two-thirds majority of both the Houses of Parliament.

**Administrative Law and Administrative Courts.** In France and in most of the continental states of Europe, a distinction is made between ordinary law and administrative law, between ordinary courts and administrative courts. In English-speaking countries, however, no such general separation is made. It is on the basis of this separation that some modern writers have classified states into two heads—*Common Law states* and *Prerogative states*. In the Common Law states, such as England, the U.S.A., the Dominions, the executive is subject to the rule of law, *i.e.*, the ordinary law of the land and is subject to the jurisdiction of the regular courts. The highest officials are subject to impeachment but if the ordinary officers do any wrong, whether in their official or private capacities, they may be hauled up before the regular courts and enjoined or penalised like anybody else. Thus the executive in such states is not protected by any special law which makes a distinction between the acts of an official and those of a private citizen.

Prerogative states are those where the executive is protected by a special system of law known as administrative law. Administrative law was born in France and later on it was borrowed by other continental countries and incorporated in their legal system. In France and on the continent, there is one system of law for the ordinary citizens and another for the executive officials. Public officials are

not amenable to the ordinary tribunals for offences committed in their official capacity. They have a right to be tried by special courts known as administrative courts. Thus it is asserted that in France, public officials are a favoured class inasmuch as the legal system maintains the principle of inequality between public officials and private citizens. But the above criticism, as will be immediately shown, is not a fair way of stating the French system of administration of justice.

### **Principles involved in the English and French Systems.**

The principles underlying the two systems rest on the way in which the English-speaking countries and the continental states have sought to protect the citizens against arbitrary acts of government. The principle that the sovereign cannot wrong his subjects and hence is not liable to be sued by them is recognised in all countries. The public service would be hindered and public safety menaced, if a contrary principle is followed. But in actual practice, a nation or state must exercise its powers through public officials who are, being human, liable to make mistakes and to do injury to citizens or their property. A strict adherence to the ancient legal maxim that 'the king can do no wrong' may lead to frequent and grave injustices. All states have in a varying degree permitted their public officials to be sued under certain prescribed conditions in order that the citizens may not suffer wrong without redress. The question therefore is whether the state should allow its public officials to be tried by the regular courts in accordance with the general laws of the land or should special courts be provided for dealing with controversies of this character in accordance with special rules.

England and America have solved the problem in one way while France, Italy and other continental states have solved them differently. Their action in both cases may be attributed to the fundamentals of their respective legal systems. The legal system in English-speaking countries, is based on common law which is essentially equalitarian in principle and as such insists upon equality of all citizens in the eye of law. It is intolerant of any special privilege



especially on the part of public officials. Thus in England and America, the officials enjoy no special immunity from the jurisdiction of the regular courts. But in France and on the continent, the legal system is based primarily on Roman law which is not equalitarian in principle. It regards the state as an end in itself and the individual only a means to the perfection of the state. Accordingly, public officials who serve the state are entitled to special consideration in the eye of law. Thus there are two systems of law in France—the administrative law which regulates the relation between private citizens and state officials, and a private law which determines issues between private citizens. The above analysis therefore shows that in English-speaking countries, there is one law and one court both for private citizens and public officials while on the continent, there is one law and one court for private citizens and a separate law and a separate court for public officials. Law in the former countries is no respecter of persons while in the latter, it is a respecter of persons.

**Criticism.** The French system is looked upon with great disfavour by Anglo-American critics who point out that administrative law does not and cannot safeguard individual liberty. Under this system, executive officers enjoy special immunity which keeps them outside the jurisdiction of the ordinary law and ordinary courts. It prescribes that a citizen who has been wronged by a state official must seek redress not in the ordinary courts but in a special court set up for that purpose. Besides, the judges in these courts are appointed, and are subject to removal by laws not applicable to the case of ordinary judges. Individuals cannot expect justice from these courts, if government policy demands a certain decision. Critics therefore point out that justice under this system is administered with a coloured eye.

The Anglo-American critics have unduly exaggerated the defects of the French legal system. Really speaking, it does not at all deserve the condemnation which it has received in the hands of those critics. It is true that administrative law has provided for immunity of public officials from the jurisdiction of the regular courts, but it should be borne in mind that this

immunity does not extend to anything done by them in a personal or non-official capacity. For offences committed in their non-official capacity or for faults arising out of personal negligence in the discharge of official duties, they can be hauled up before ordinary courts of law. In case of conflict regarding the jurisdiction of the courts, it is decided by a Tribunal of Conflict which, by its very composition, commands universal respect and confidence in France. The true test of the merit of a system lies in the extent to which it can meet the needs of the people for whom it is intended. The attitude of the French people towards the system is marked by approbation and confidence. They regard the system as a protection against arbitrary governmental action and therefore a bulwark of their liberty. They are perfectly justified in so regarding it because law-suits are quickly disposed of in these courts, they are also cheaper and the procedure is simpler than in ordinary courts. The vastness of the country and the highly centralised system of government in France have made it necessary for her to adopt the system of administrative law. Local officials in France function at a great distance from the seat of the central government and therefore administrative law and administrative courts are necessary to check official abuses on the one hand and to protect individual liberty against governmental encroachment on the other. These laws deal not only with the liability of the state and its subordinate divisions for injuries done to private individuals but also with the rules relating to the validity of administrative decrees and the awarding of damages to private individuals for injuries which arise out of the negligence of public service. With the growth of democracy, the rule of law has been considerably relaxed even in English-speaking countries where a number of special tribunals are set up whenever necessary. The principle of administrative law is thus slowly creeping into the legal system of Common Law states as well, but the distinction is that whereas in France and in continental states, the special courts constitute a regular part of the judicial system, in England and America they do not form a part of the judicial system. They are established whenever necessary. Garner observes, 'It can now be said without possibility of contradic-

tion that there is no other country in which the rights of private individuals are so well protected (as in France) against the arbitrariness, the abuse, and the illegal conduct of the administrative authorities, and where people are so sure of receiving reparation for injuries sustained on account of such conduct”

### **Relation between the Legislature and the Judiciary.**

The normal relation between the legislature and the judiciary is that the former makes laws which the latter interprets and applies to specific cases. But in certain cases, it is found that the relation between the two is marked by the subordination of the one to the other and a good deal of overlapping of powers is also noticed. Thus in many states, the legislature especially, the upper House performs some judicial functions. It not only acts as the highest court of appeal but in some cases acts as a court to hear impeachments against high executive officers. The legislature in many cases appoints the judiciary but in the U.S.A., the judges of the Supreme Court are appointed by the executive subject to confirmation by the Senate.

In the U.S.A. and India, the judiciary acts as the custodian of the constitution and in the former country it can declare acts of the legislature as null and void. But in France and in England, the judiciary does not possess this power. The judiciary not only applies law but in the act of application, the judiciary interprets the laws and thereby supplements the existing law. These are called ‘Judge-made Laws’.

### **Relation between the Executive and the Judiciary.**

Judges are made independent of the control of the executive so that the latter may not interfere with the functions of the former. The executive head is also exempt from the jurisdiction of any court. In France and on the continent, executive officers are not subject to the jurisdiction of ordinary courts. Nevertheless, executive and judicial functions impinge on each other at certain points. *Firstly*, the executive exercises some judicial functions. *Secondly*, the judiciary exercises some administrative power including a certain

amount of control over the executive *Thurdly*, the judiciary is, in many cases, appointed by the executive which enjoys the judicial power, viz, prerogative of mercy

Thus it appears that an absolute separation of powers between the three is neither desirable nor possible. The powers should be so organised and their mutual relation so adjusted as to preclude the possibility of any conflict between them.

## SUMMARY

AI *The Executive* The term 'executive' includes all the government departments except the legislature and the judiciary

II *Classification of the Executive* The executive may be hereditary or elective, nominal or real and Parliamentary or Non-Parliamentary. Almost all governments have single executive except in Switzerland where the executive is collegial in form

III *Mode of choice* (i) The executive may be a hereditary monarch, (ii) he may be directly elected by the people, or (iii) indirectly elected by the people, or (iv) elected by the legislature

IV *Term of the Executive* The term of the executive should be neither too short nor too long. A four-year term is regarded as the proper tenure of office

V *Functions of the Executive* The executive power includes (i) Diplomatic power, (ii) Administrative power, (iii) Military power, (iv) Judicial power and (v) Legislative power

BI *The Judiciary Its Functions* The judiciary is to apply law to specific cases. The judiciary also interprets the law and supplements the existing laws. It performs certain other functions of a non-judicial nature. So it is wrong to regard the judiciary as a subordinate branch of the legislature

II *Qualifications of Judges* Judges should be (i) well-versed in law, (ii) impartial and (iii) independent of outside influence

III *Independence of the Judiciary* Independence of the judiciary is necessary to secure impartial trial of the accused. An independent judiciary is the bulwark of individual liberty. The independence of the judiciary is secured (a) by the proper method of their appointment, (b) making the tenure of their office independent of the control of other organs of the government and (c) by giving them a good salary

IV *Administrative Law and Administrative Court* The Rule of Law which prevails in England means that all persons, private citizens or public officials, will be regarded as equal in the eye of law. The same law will apply to all persons who are amenable to the same courts of law. Public officials do not enjoy any special privilege denied to the private citizens. But in France and in other continental countries, public officials are not amenable to the ordinary courts of law for offences committed in their official capacity. They are tried by a special class of tribunals known as Administrative Courts which apply a special set of laws known as Administrative Law. This law protects public servants from the jurisdiction of ordinary courts and ordinary law of the land.

The defect of the system lies in the fact that it destroys the legal protection of the individual against illegal acts of the state officials. But its chief merit is that it protects individual liberty by clearly distinguishing between a 'fault of service' and 'a personal fault' on the part of the official. 'The remedies which the French citizen has against his government are speedier, cheaper and in every way more satisfactory than those Englishmen or Americans possess in relation to their respective governments.'

### QUESTIONS

- 1 State the functions of the Executive (C U 1923)
- 2 Detail the powers of the Government which are embraced in the Legislature and the Executive. State the objections to the election of the chief executive by the legislature (C U 1930)
- 3 What do you understand by the term 'independence of the judiciary'? Why is it necessary that the judiciary should be independent? What should be their functions and qualifications? (C U 1921)
- 4 What are the functions and jurisdiction of the French Administrative courts? Discuss the advantages of, and objections to these courts (C. U 1924, Gauhati, 1949)
- 5 What degree of legislative power do you consider it safe and practicable to entrust to the executive? (Gauhati, 1949)
- 6 What are the political, administrative and legislative functions of the executive? (C U 1954)
- 7 How far do you agree with the view of Laski that "of all methods of (judicial) appointment, that of election by the people is without exception the worst." Illustrate your answer. [C U (Hon) 1957]

## CHAPTER XVII

### PARTY GOVERNMENT AND PUBLIC OPINION

#### *References .*

Duverger, M—Political Parties

Bryce—Modern Democracies, Vol I, Chs XI, XV

MacIver—The Modern State, Bk, 3, Ch XIII

M Ostrogorski—Democracy and the Organisation of Political Parties

Report on Indian Constitutional Reforms (1918), Ch 8

**Meaning and Necessity of Political Parties.** Political parties which have come into existence in the wake of democratic governments are dominating factors in modern political life. The political, social and economic life of the state depends to a large extent on its party organisation. It is the pivot round which the machinery of the state is made to revolve. The ancient states were dynastic or class states and hence there was no party government. Party can function only in a democracy. Party is formed in order to constitute a majority in the legislature. But Parliamentary majority cannot rule a country by divine right or by force, they must be sanctioned by public opinion. That opinion must express itself in organised form, and so parties grow up within the state. It is the only means by which the ultimate political sovereign can definitely control government.

A political party has been defined "as a body of men united for promoting by their joint endeavours the national interest upon some particular principle in which they are agreed". When a number of people hold similar views on some questions of public interest, they generally organise themselves into a party in order that their views may be propagated among the masses. The views of an individual however just or convincing they might be, will not carry any weight unless he joins with others. His voice will be a cry in the wilderness, it will be lost in thousand other voices unless he can bring pressure to bear on the power that be. Thus political parties arise out of the necessity for upholding the

principles or policies which a group of people consider to be conducive to the best interest of the nation. The ideal behind the formation of party is therefore union is strength.

The essential conditions which go to constitute a healthy party organisation are *four* in number. *Firstly*, members of a political party may have difference of opinion with regard to the details of the party programme but it is absolutely essential that all of them must agree with regard to the fundamental principle of the party. In the absence of this common faith in, and respect for, party principle, no party can promote the cause which it upholds.

*Secondly*, as has been pointed out above, the basic principle of party organisation is 'union is strength' and party members are properly organised only when they are inspired by this common ideal. In the absence of this ideal, party degenerates into an unorganised mass of people.

*Thirdly*, the distinguishing mark of a political party is that it always seeks to realise its end by and through constitutional means. The real strength of a political party lies in the support of the people expressed through their voting right. A political party degenerates into a faction or a clique when it seeks to promote its cause by the application of force or by other underhand means.

*Lastly*, political parties can be easily distinguished from factions or cliques in so far as their aims and objects are concerned. Nothing short of the promotion of national interest is the goal of political parties.

**Organisation and Functions of Parties.** The aim of political parties is to promote national interest. This is possible only by capturing political power and giving legislative shape to their policy and programme. But unless a party is well organised, it cannot effectively carry out its policies. Unity is thus the soul of party organisation and this is secured and maintained by the party leaders. The leaders through their personal influences bring about a general agreement among the party followers although difference of opinion may exist in respect to minor matters. The primary function of political parties is to win the contest for political power and office. The first task of a party is therefore the formulation of policies.

which it upholds. Once policies have been formulated, the parties set about for political propaganda through the press and the platform. It must convince the voters for enlisting their support at the time of election. The party selects its own candidates and persuades voters to vote for party candidates. When it gets a majority, it forms the government and endeavours to secure the fulfilment of its promises to the voters by giving legislative shape to their policy and programme:

There are four general types of party groupings in modern states. *Firstly*, there are the *Radicals* who want a root and branch change of the existing institutions. *Secondly*, there are the *Liberals* who want to introduce progressive reforms. *Thirdly*, the *Conservatives* try to maintain the *status quo*, i.e., to keep existing institutions without any change. *Fourthly*, the *Reactionaries* insist upon clinging to the older order of things. These four party groupings are generally referred to as the Extreme Left, Left, the Right and the Extreme Right according to the order in which they occupy their seats in the legislature.

It must however be remembered that a party must always find new issues or revive old ones. It must readjust its fundamental principle in such a way that it can make its appeal effective to the electorate. Another characteristic common to all party system is that nowhere is it recognised by the law of the state, but everywhere it *acts* either outside or inside the government. Although the party system is an extra-legal growth, it has helped in many countries, especially in the U.S.A., the smooth working of the government by mitigating the rigidity of the constitution to some extent. The great cleavages of modern civilised society are mainly economic and not racial or religious and it is on these differences that political parties of modern states are formed.

**Merits of Parties.** The party system is essential to the successful working of representative governments. The party system organises the people into groups through which the people can express their opinion on questions of public policy. It organises the unorganised masses and moulds their opinion with a view to making them effective. It selects problems and



suggests solutions which are acceptable to the public. There is thus a continuous process of education of the electorate undertaken by political parties. *Secondly*, in the absence of organised parties, the administrative machinery cannot work smoothly. The executive department of the government can work satisfactorily only when it is backed by a majority in the legislature. The party system is the only means by which a majority can be secured in the legislature. *Thirdly*, the party system prevents hasty and ill-considered legislation. It also keeps the executive in check. The party forming the government is always conscious of the fact that their policy and programme are subject to scrutiny and criticism of the opposition. This consciousness prevents them from adopting any measure which might adversely affect the interests of the people. In case of disapproval of their policy by the voters, the party-in-power runs the risk of losing power at the time of the next election. It follows therefore that party rule implies the alternation of power, a system of succession which gives each party its opportunity. A healthy rivalry between different parties is therefore calculated to promote the best interests of the nation. *Fourthly*, political parties inspire the people with interest in political affairs. The party system has an educative value inasmuch as it stimulates public spirit and induces even the humblest man to take active interest in public affairs. *Fifthly*, the party system acts as a connecting link between the different organs of the government by bringing about harmony in the activities of the different organs. In the U.S.A. the possibility of frequent deadlocks consequent on the rigid separation of powers has been averted by the organisation of the government on party basis. The President who is the head of the executive and the Congress cannot work at cross purposes when both of them belong to the same party.

**Demerits.** But grave charges have been levelled against the party system. *Firstly*, it creates artificial division and brings about factions within the country. The most serious charge against the party system is that it destroys the independence of individual voters. *Secondly*, the solidarity of the party must be maintained at all cost and to realise it, the

party must maintain artificial unanimity by suppressing individual opinion. Everyone must bow to the decision of the party as expressed through the leader. Thus the system destroys freedom of thought and opinion. *Thirdly*, the party system therefore leads to the exclusion of some of the ablest men from public life, who fail to see eye to eye with the party leaders. *Fourthly*, parties in the heat of their rivalry with one another are apt to forget their aims and objects. Thus the members of a party may seek to promote their party interest at the expense of the national interest. *Fifthly*, the party system tends to lower the moral tone of the country by banishing courtesy from public life. Decency and decorum are at a discount and rival party leaders indulge in mutual recriminations, forgetful of the dignity of their social status. Thus rivalry between party leaders gives rise to much bitterness of feeling which is likely to disturb public peace at the time of general election. *Lastly*, the party-system as has been characterised by Alexander Pope as "the madness of the many for the gain of the few" is exposed to the greatest danger when it passes into the hands of a few active and intriguing persons who form the 'Boss' or 'Ring' and manipulate the whole machinery of the party for promoting their selfish interests.

Whatever defects the party system may have, it is now considered to be a natural and inevitable concomitant of democratic government. Without it, government will be rigid and irresponsible, "conceived in terms of mastery rather than of service". In the absence of the party system, the state will either grow autocratic or will be the battleground of contending factions. "The party system is based on the contrary theory that men are rational beings, in so far at least that they admit principle to be a better ground of government rather than force, persuasion more desirable than compulsion, and the conflict of ideas more creative than clash of aims."

**Dual or Two-Party vs. Multiple Party System.** In the civilised world of today, there is hardly any government which is not based on party lines. In fact, the party system is regarded as almost indispensable to the successful working of representative government and if that be the case, the ques-

tion naturally arises as to which of the two systems—the dual or the multiple system is preferable?

The two-party system had its origin in England where it worked very successfully till the end of the 19th century and even now, owing to the decline of the Liberal Party there are virtually two major parties, the Labour and the Conservative. In the U S A, the party system may be said to be an imitation of the English System in so far as the country is being ruled alternately by two parties, the Democrats and the Republicans, since the inception of the federation.

*Merits.* The great advantage of the two-party system is that under it the determination of the government is simple. The party having a majority in the legislature forms the ministry. It secures not only a stable but also a strong government which, sure of majority support in the legislature, can pursue its own policy and programme unhampered for the promotion of national interest. Furthermore, under the bi-party system, the party in power cannot act in an irresponsible way because of the presence of the opposition party which is ready to expose the shortcomings of the government. Thus a healthy rivalry between the two parties tends to make the machinery of the government perfect and in general it increases efficiency and sense of responsibility. *Lastly*, the system is helpful to the voter who is required to choose between only two issues instead of being confronted with too many alternatives which sometimes prove baffling to the average voter.

*Demerits.* But the bi-party system is not without its defects. The system is criticised on the ground that it puts definite limits to the political expression of public opinion. As there is no possibility of a compromise between the extreme left and the extreme right, the more moderate elements of either party get little scope for the free expression of their opinion. Under this system, the voter cannot always vote for the best man as his choice is limited to either of the two-party candidates. Sometimes he has to vote for a candidate against his will. Hence the verdict of the nation as expressed through a general election may not always indicate the real will of the voters. Again, the system gives rise to dictator-

ship of the cabinet which, backed by a majority in the legislature, may concentrate all powers in its hand. Thus in England, the Cabinet, vested as it is with the power of dissolving the House of Commons, has assumed a role of dictatorship in all spheres of administration. *Lastly*, the system destroys the freedom of opinion of party members who are compelled to vote according to the directions of the party whip.

*Merits of the Multiple Party System.* It is claimed that the evils of the two-party system are to some extent counteracted by the multiple party system which makes it possible for different groups to unite and to separate with every change of situation. In the absence of strict party discipline, members can hold and express their opinion more freely than under the bi-party system. Again the system prevents the tyranny of the majority party and leaves the door always open for compromise between different party groups. Furthermore, the government that is formed under the multiple party system is more representative in character in view of the fact that such government is the result of a coalition between a number of parties. As no single party can form a ministry, the ministry that is formed represents varieties of opinions and interests and as such the government cannot grow despotic.

*Demerits.* But the greatest defect of the group system is that under it the government that is formed is not only weak but also unstable. The ministry is always the result of negotiation and compromise and as such it lacks the self-confidence and strength which a ministry under the bi-party system possesses. The slightest difference of opinion among party groups forming the ministry will lead to a break-up of the coalition, the dissentient groups withdrawing their support from the ministry. Thus no stable government is possible under this system. Instability makes it impossible for the government to pursue any systematic long-term policy. Unity and solidarity which are so essential to a strong and vigorous executive cannot grow among the members of the executive as they are drawn from different opinion-groups, having no common recognised leader to guide and control them. In the absence of solidarity, the government becomes weak and

weakness leads to inefficiency and irresponsibility. *Lastly*, formation of ministry under the multiple party system depends on negotiation and 'intrigue between party-groups and not on the verdict of the nation expressed at a general election as under the bi-party system

**Non-party Government.** The use of dictatorship supported by a single party the limited choice and rigour of party discipline under the two-party system and lastly the instability and weakness of a government under the multiple party system have led some thinkers to advocate the complete abolition of government by parties. They advocate a *non-party* government in which each citizen will be free to express his political views according to his individual judgment. Rousseau, more than any other thinker, was conscious of the defects of party government and hence he declared that the General will was incapable of realisation under the party system which seeks to create an artificial unanimity of opinion. Many other thinkers including George Washington, Burke and Laski have warned us against the possible danger of government by party.

Even if we admit that the party system is open to grave evils which not only suppress the freedom of the individual but also corrupt public life, the question is what is the working alternative to it? Modern governments, call it democratic or dictatorial, are formed and backed by parties. To destroy it is to destroy the government itself. In the absence of the party system, government will be rigid, irresponsive to public opinion. Without it, compulsion and not persuasion will be the only method of changing a government. The abolition of party will leave the individual quite helpless in making his voice effective. The despotism of the party will be replaced by a worse type of despotism which cannot be dislodged except by the application of force. The abolition of party is likely to limit the outlook of the individual to the narrow sphere of his own interest and for want of a correct lead, liberty of the individual might turn into license. The right to differ on questions of public policy is a fundamental right but it cannot be made effective except by united demand.

Thus it is evident that the party system is natural and inevitable—it is a proof that men are rational beings and as such they prefer settlement of their differences by the force of logic rather than by the force of arms. A non-party government cannot last long under modern conditions of political life. Either it will drift towards a government by a single party with the dictator as the rallying centre or it will turn into the battle-ground of several opinion-groups, none of which being strong enough to hold power for a long time.

The above analysis clearly shows that the idea of a non-party government is neither desirable nor practicable. The remedy to the evils of party government lies not in its total abolition but in its reform—an all-round reform in its aim, organisation and activity. It must be borne in mind that the party system is a means to an end and it should not be regarded as an end in itself. The realisation of this fact will go a long way in reforming the party machinery so that it may serve its purpose in the best possible way. In conclusion it may be said that the success of the party system depends on the character of the citizens forming the party and if the citizens forming the party do not allow their party to deviate from his true aims and objects, the party system, instead of being a curse as it has proved itself in many countries, will be a blessing to mankind in their efforts for the realisation of the highest political ideal.

**Party Government in Modern Democracies. Dual Party in England.** In England, parties existed from early times in the form of factional groups which fought each other for capturing political power. But the most important feature in the organisation of English political parties is the tradition of a bi-party system. Thus the Lancastrians fought the Yorkists, the White Roses fought the Red Roses and the Cavaliers, the Roundheads. When Parliamentary supremacy was established after the Glorious Revolution of 1688, two well-organised parties came into existence under the names of Whigs and Tories. Subsequently, the nomenclature was changed into Conservatives and Liberals,—the Conservatives clung to the Tory tradition of maintaining the *status quo* while the Liberals embarked on a bold policy of progressive reforms in

all directions. At the end of the 19th century, a new party known as the Irish Nationalist Party appeared on the scene. Its avowed object was to secure Home Rule for Ireland. With the establishment of the Irish Free State in 1922, the party disappeared from the scene. The first quarter of the twentieth century saw the emergence of a new political party known as the Labour party which broke the tradition of the historic two-party system in England. The aim of the Labour party is to promote the welfare of the worker, to emancipate labour from the domination of the capitalist and landlord class and to establish social and economic equality between classes. Whatever may be the cleavage between these parties on economic and political issues, Englishmen forget their party differences at the approach of a national calamity. Politics is a game with them and so they can readily sink their differences to form a coalition ministry if such coalition is calculated to promote national interest. Thus during the two World Wars, national governments were formed in England consisting of the leaders of all major political parties.

Another noticeable feature of the English party system is that the party is inseparable from the government. The party works inside the government which is merely an agent through which the party expresses its will. Lowell says, "It is a wheel within a wheel." The Cabinet consisting of the leaders of the party is the innermost wheel, the outside ring being the party which sends the ministers to office.

English political parties are well organised. Each of the parties has its local associations in every borough, county, affiliated to its central organisation in London. The National Liberal Federation, the National Conservative Union and the Labour Congress are the three respective central agencies which formulate the policies of the parties and dictate them to the local bodies.

**Party system in the U.S.A.** The party system in the United States is an extra-legal growth which functions outside the machinery of the government. Parties have come into existence not so much for the difference in their policies or principles as for securing unity and harmony between the different organs of the government. The constitution of the

U.S.A. is based on the principle of a rigid separation of powers and the party system acts as a connecting link between the different organs of the government. The party system also acts as an agency for the selection of candidates for filling certain offices, both national and local.

There are at present *two* principal parties in the United States—the Democrats and the Republicans. They can be distinguished from each other more by their organisation than by the difference in their policy or programme. Each of the two has its primary organisation in every constituency known as the 'Caucus'. The next higher organisation is called the 'Convention' located in every district. Above it, is the 'State Convention' whose function is to select candidates for state offices and send delegates to the 'National Convention' which stands at the apex of the party organisation. This body formulates the policy for the whole party on a national basis and nominates candidates for presidency and vice-presidency. The local and national organisations of the parties appoint Committees of their own and act through them.

The party system in the U.S.A. has given rise to certain serious evils. The entire party organisation is under the control of the 'boss,' i.e., the party leader who, with the help of the 'ring,' i.e., the followers, manages the election for their selfish interests. The 'Spoils system,' by which government offices are given to party supporters, enables the 'boss' to reward the party followers with executive posts for their support in winning the election. Another abuse of the system is the 'graft' by which rich business bodies render pecuniary help to the 'bosses' in order to secure favourable legislation for their selfish interests.

**Multiple Party System in France.** In France, a multiple party system prevails and none of them commands a majority in the legislature. Each of these parties has again its subdivisions consisting of a small number of members who are not subject to any strict party discipline and who may not have a recognised leader to lead them. French political parties are a sort of half-way between factions and parties which are lacking in efficient organisation and a definite programme to follow. They should better be termed as what the French



people call them 'Groupment'—the Group system. The reason for this political pluralism in France is partly due to the lack of continuity in French political history. The Revolution of 1789 destroyed the political traditions of the past but failed to create a new political orientation. So many different forms of government were tried and abandoned closely on one another's heels during the period after the Revolution that none of them could acquire a firm grip on the confidence of the people. Besides, the French people are highly individualistic in temperament. They do not like to sacrifice their individuality even for the sake of unity which is necessary for concerted policy and action. The system of Parliamentary procedure has also contributed to the weakness of the party organisation in France. The interpellation, the Committee system and the practice of placing reporters in charge of government measures instead of ministers have weakened leadership and have stood in the way of the growth of party solidarity.

French ministries are therefore the result of coalition of several parties holding conflicting views. They are short-lived. Sometimes, they break down within a fortnight on the first important question brought before the assembly. Thus French ministries are notoriously unstable and critics point out that frequent changes of ministry hamper political progress. As against this view, it is asserted by the supporters of the French System of Cabinet Government that under democracy which provides adequate opportunity for all, progress should be rather slow. Besides, multiple party groups can reflect in a better way all the differences of opinion that arise among the voters than two-party groups.

**Rise of Single Political Party in Europe.** Party Government has not been successful in continental Europe except in France. The most significant fact in the history of the post-war governments of Europe is the rise of a single political party, especially in Germany, Italy and Russia. It became virtually a dictatorship of the party which ruthlessly suppressed all other parties. The whole nation was made to think and act in the same way. Thus the Nazi party in Germany, the Fascist party in Italy and the Communist party in the

U.S.S.R captured political power and dictated to the people the course to be followed. The idea behind the formation of a single party is that national interest can best be promoted by unity of policy and action rather than by artificial division in party organisation. Division into groups means weakening of power which is greatly disastrous to national prosperity and progress. Hence they want to mobilise the energy of the whole nation and divert it to a particular channel for the promotion of national interests. The defeat of the Axis Partners in the hands of the Allied Powers in the Second World War has led to the liquidation, of the Nazi party in Germany and the Fascist party in Italy. The Communist party in Russia still holds a pre-eminent position not only within the U.S.S.R., but is slowly and steadily making its way in other countries as well.

**Safe-guards for the evils of Party-system.** Parties may be formed out of various motives. They may be formed out of interest or principle. Parties when formed out of motives of interest give rise to serious evils which stand in the way of the realisation of the ideal of party government, namely, welfare of the country. The evils of the party system may be removed by such measures as constitutional provision of fundamental rights, by separation of powers, by safeguarding the position of the permanent staff from party influence, and by securing the rights of the minorities.

In order to make the government free from party influence, the following measures should be adopted. The government, should be so constituted that a single person or a single party may not have a monopoly of all powers. For this purpose, direct democratic checks in the form of referendum, initiative and recall should be made compulsory in making important decisions by the government. After all, an alert and intelligent public opinion is the most effective check upon party dictatorship. If the people are vigilant and zealously guard their democratic rights no government will dare encroach upon their rights. *Secondly*, appointments to public services should be made on the sole test of merit and these appointments should be made by an absolutely independent Public Service Commission free from the influence of the

party-in power. The state should confer no title or honour upon any person or if it confers, it should be done strictly on the basis of social service rendered by the recipient of such honours and titles. *Thirdly*, fundamental rights of the citizens and rights of the minorities must be guaranteed by the constitution which should be written and rigid so that the governing authority may not alter it at will. *Fourthly*, the sanctity and inviolability of the constitution should be preserved by an independent and impartial judiciary which is regarded as the greatest bulwark of liberty. *Fifthly*, the terms and conditions of services of public officials should be adequately safeguarded in order to enable them to discharge their duties independent of the favour or frown of the ruling authority. Lastly, the citizens should be given such an education and training which will enable them to rise above their petty personal or party interest and make them more conscious of national interest.

**Public Opinion.** It has been well-said that "an alert and intelligent public opinion is the first essential of democracy" Democracy would degenerate into dictatorship, if the people are not mindful of their interest. If the people cease to be alert, the government will not only not carry out the will of the people, but it will act in such a way as to promote the selfish interests of the ruling class. The essence of popular government is therefore that it consists in the control of political affairs by public opinion. Public opinion exercises an indirect influence on the activities of the government. The social and political changes introduced by new laws in a country mostly originate with the people. In a democracy, people first put forward their demand and make agitation for its fulfilment. When the movement becomes sufficiently strong, government becomes alive to its responsibility and makes necessary legislation for carrying out the wishes of the people. Thus movement for the abolition of slavery in America originated with the people and was subsequently adopted by the legislature when there was a strong public opinion behind it. A popular government is thus a government which is amenable to the influence of public opinion. But it would be wrong to assume public opinion to be a mere

passing whim. It is, in reality, an enduring opinion of the people.

**Its Nature.** Public opinion refers to the opinion on the important public questions, which are substantially shared by the dominant portion of the community. As Lowell observes, in order that opinion may be public, a majority is not enough and unanimity is not required. Unanimity of opinion is not required in public opinion. Rather public opinion will be deprived of all value if there is no dissent. In order to constitute public opinion, it is not necessary that all must think alike. It is enough that upon fundamentals, there is agreement among them, though on the non-essential points, there may be divergences of view. Again public opinion does not mean the opinion of the numerical majority. It is generally held that public opinion depends upon and is measured by the mere number of persons to be found on each side of a question. But this is not true. If 49 p.c. of a community feels very strongly on the one side and 51 p.c. are lukewarmly on the other, the former opinion has the greater public force behind it and is sure to prevail in the end. The opinion of persons possessing the greatest knowledge of a subject is also of greater weight than that of an equal number of ignorant persons. Thus the opinion of a small number of physicians on questions of public health and hygiene is of more importance than that of a large number of lay people. Intensity of belief with which an opinion is held is a factor which is taken into consideration in determining public opinion. The essential characteristic of public opinion is that it is an opinion which is shared by a dominant section of the people and which has for its object the welfare of the community at large. Matters of individual or group interest cannot be the subject of public opinion. Nothing short of common interest can be the true criterion of public opinion. Thus majority opinion need not always be regarded as public opinion, because the opinion of the majority might be formed without any reference to the good of the minority. Lowell says that in order to be worthy of the name, the opinion must be such that, while the minority may not share it, they feel bound by conviction, and not by fear, to accept it.

An opinion, in order to be an opinion in the true sense of the term, must be an "integral part of the believer's philosophy" The opinion of a person is generally formed by outside opinion. An opinion is held to be a true opinion because the person holding the opinion believes it to be true and as such his own opinion irrespective of the source by which he may be influenced to form that opinion.

**Organs of Formulation and Expression.** The chief agencies that formulate and mould public opinion in a country are (i) the Press, (ii) the Platform, (iii) Political parties, (iv) Cultural Societies, (v) Educational Institutions, (vi) the Radio and the Cinema and (vii) the Legislature.

The bulk of the voters are ignorant and they are absolutely indifferent to the questions of public interest. Due to their lack of education, they are incapable of forming any judgment on questions of public policy. The press plays an important part in moulding the opinion of the masses in a country. The habit of reading newspapers is steadily increasing among all sections of the people and conscientious and honest journalism may go a long way in developing right thinking among the masses by not only giving news but also expressing correct views. Political parties, educational institutions, cultural societies, the radio and the cinema contribute, in no small measure, to the growth of a healthy public opinion in a country. The great seats of learning can give a correct lead to the people by their contribution to the great ideas which have moved humanity in all ages. The radio and the cinema have in modern times become important agencies for moulding public opinion. They are used as means of propaganda. Their right use ensures the growth of a healthy public opinion in a country. Matters of importance which affect the people in their daily life may be popularised through the radio and the cinema.

**Public Opinion in India.** There hardly exists any such thing as public opinion in India. The illiteracy and ignorance of the Indian people are hindrances to the formation of a vigorous public opinion in our country. The people do not possess that much of knowledge of facts which will enable them to draw correct conclusions therefrom. They are so

poor that they have neither the time nor the willingness to devote their time and energy to questions of public interests. Furthermore the growth of political parties on communal lines has prevented the people from thinking of common good which is regarded as the basis of public opinion. But it is hoped that a sound public opinion will grow in India with the spread of liberal education among the masses which will elevate their character and will enable them to rise above their petty group interests

### **Influence of Public Opinion on Legislation**

States which were so long dynastic, oligarchical or dictatorial in their character and organisation are fast drifting towards the democratic form, the basis of which is the will of the people and not force of the ruling authority. Although the consent of the governed is now universally recognised as the basis of the state, yet it is not possible for the entire body of the governed to express their consent directly to the affairs of the government. Hence they or the more capable of them periodically elect their deputies who make laws, levy taxes and in general supervise the work of administration on their behalf. If the deputies act contrary to the will of those whom they represent or fail to promote the interest of the people, they are either subject to recall or liable to lose their membership at the time of the next election. A law which fails to reflect public opinion correctly or a law which is pernicious in its effect is honoured more in the breach than in the observance. Public opinion can bring pressure to bear upon the government in many ways. It influences legislation through the press, the platform and in countries like Switzerland, public opinion becomes active through devices like the referendum, initiative and recall. If the legislature turn a deaf ear to the demand of the public, the latter can, as an extreme measure, resort to the exercise of their right to revolution.

The legislature should therefore feel the pulse of the nation before enacting a particular piece of legislation. In doing so, it may often be necessary on the part of the legislature not only to be influenced by public opinion but also

to influence public opinion itself which very often requires a correct lead for its proper formulation and expression. So popular government and public opinion go hand in hand.

## SUMMARY

*I Meaning and Necessity* A number of persons acting as a unit for promotion of national interest is called a political party. A party functions only in a democracy. It is formed to control the affairs of the government.

*II Organisation and Functions* A political party must formulate a policy by means of which it endeavours to promote national interest. The party selects candidates for election and persuades voters to vote for party candidates by propaganda through the press and the platform. There are four natural divisions of political parties. The Right Wing comprises the Reactionaries and the Conservatives who are opposed to reform. The Left Wing consists of the Liberals and the Radicals who are in favour of change.

*III Merits of party system* (i) It is essential to democracy. (ii) It organises public opinion. (iii) It checks the arbitrary power of the government. (iv) It gives every party group an opportunity to prove its worth. (v) It stimulates public spirit. (vi) In some states as in the U S A., the party acts as a link between the executive and the legislature.

*IV. Demerits* (i) It destroys individuality. (ii) It excludes honest men from public life. (iii) It creates bitterness of feeling and degrades the moral tone of society. (iv) It sometimes places the interest of the party above the interest of the nation. (v) It is exposed to the danger of being dominated by cliques which seek to promote their selfish interests.

*Party Government in modern Democracies* In England, there is the tradition of a bi-party system which has been broken by the emergence of the Labour party in the early twentieth century. Each of the three parties in England, the Liberal, the Conservative and the Labour, has its own local organisation affiliated to its central agency in London. In England, the party system works inside the government. In the U S A., there are two parties—the Democrats and the Republicans. The American parties work outside the government. They serve as a connecting link between the different organs of the government and also as agencies for selection of candidates for filling in certain offices. The Party system in the U S A. has given rise to serious evils like the 'boss', the 'ring', the 'spoils system', etc. In France, political parties are not so developed as in England or in the

U S A There are too many parties without any recognised leader to guide them. The ministry in France is formed by the coalition of several parties holding different views and as such ministries are short-lived in France. The lack of continuity in French political history coupled with a highly individualistic temperament of the people is responsible for multiplicity of parties in France. In continental Europe, party system has not been successful. The post-war history of continental Europe, notably of Germany, Italy and Russia, is marked by the dictatorship of a single political party which exterminated all other parties.

*Public opinion* Public opinion means the opinion which is shared by a large section of the people and which has for its aim the promotion of the common interest. It is the opinion held not necessarily by the numerical majority but by the effective majority, i.e., those who possess the greatest knowledge of a subject. There is a connection between democracy and public opinion. The essential attribute of a popular government is that it is a form of government in which public opinion controls the political affairs of the state. Public opinion manifests itself through and is influenced by the press, the platform, parties, educational institutions, the radio, the cinema, etc. The illiteracy, ignorance, poverty and communalism are obstacles to the formation of a vigorous public opinion in India.

## QUESTIONS

1 "Far from being in conflict with the theory of democratic government, party government is the only thing which renders it feasible" (Bombay 1930)

2 Discuss the merits and defects of the party system. Have there been any changes in the party system of England during recent years? (C U 1932)

3 Discuss the advantages and disadvantages of party government. Can you suggest any practical working alternative? (C U 1949, Gauhati 1948)

4 What is the exact nature of public opinion? How is it created? (C U 1934)

5 What are the advantages and disadvantages of party government? What safeguards should be provided in the constitution to mitigate its evils? (C U 1947)

6 Discuss the use, abuse and the true role of the Party System in Democracy (C U 1953)

7 Write a short essay on —The Party System in India (C U 1952)



8 Define a political party What are the functions of a political party? (C U. 1955.)

9 Discuss the use and limitations of the party system Answer with special reference to the conditions in this country. (Gauhati, 1957)

10 "A political system is the more satisfactory, the more it is able to express itself through the antithesis of two great parties" (Harold Laski).

Discuss this statement, with special reference to the merits and defects of the "two-party system" *versus* "a multiplicity of groups" in a country (C U Hon 1957)

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## CHAPTER XVIII

### THE ENDS OF THE STATE, THE PROVINCE AND FUNCTIONS OF GOVERNMENT

#### *References:*

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Merriam and Baines—A History of Political Theories,  
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W. S. M'Kechnie—The State and the Individual,  
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G. H. Sabine—A History of Political Theory, Ch. 34

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**Various ends of the State.** The ancients, especially the Greeks and the Romans, regarded the state as an end in itself, rather than a means to the realisation of particular ends. The idea was that the individual existed for the state, and not the state for the individual. The individuals were considered as parts of the state and in accordance with this notion, all their activities were regulated by the state. The idea of personal rights of individuals apart from the collective rights of society was conspicuous by its absence. The city-state was a unique form of political organisation in which the whole activity and energy of the people,—political, social, religious, cultural—were focussed at one point, namely the state. The city was described by Greek political philosophers precisely in terms of a universal partnership,—‘a partnership’, according to Burke, “in all science; a partnership in all art, a partnership in every virtue and in all perfection.” Aristotle, in his *Politics*, emphasizes the fact that the state is not a mere society, having a common place, established for the prevention of crime and for the sake of exchange. Political society, according to him, exists for the sake of noble actions, and not for mere companionship. The end is a good life—a life of virtue. Hence the end of the state being the comprehensive one of securing a good life for all citizens, no sphere of individual life was considered outside

the jurisdiction of the state. The Greek idea of state-pater-  
nalism was adopted by the Romans with slight modification.  
The Romans recognised the rights of the family as against the  
state.

But the Greek conception of the sphere of the state as a  
universal partnership was assailed by the rise of papacy who  
claimed complete independence of the religious life of the state.  
Thus the growth of christianity coupled with the fierce spirit of  
independence of the teutonic races who could brook no in-  
fringement of their personal rights, gradually transformed the  
conception of the state from an end to a means. Modern poli-  
tical science has, however, rejected the ancient view. It  
emphasizes the principle that the state is merely a means for  
the furtherance of human welfare and that it exists for the  
individual and not the individual for it. The status of the  
individual has considerably improved in modern democracy.  
His rights are now recognised by the modern state.

**The true Ends of the State.** So long as dynastic rules  
prevailed and the state was looked upon as the private property  
of the house of the rulers, no systematic theory about the true  
end of the state could develop. It was only with the growth of  
democratic ideas that people began to speculate on the end of  
the state. Since the rise of liberalism, different theories have  
been advanced by different writers regarding the end of the  
state. Thus some suggest order, progress or justice to be the  
end of the state while others regard happiness, utility, national  
power or civilisation of mankind to be the true end of the state.  
Bluntschli attaches great importance to the 'General welfare  
theory'. The utilitarian school of philosophers led by Ben-  
tham held that the aim of the state was to promote the greatest  
good of the greatest number and as a matter of fact many of  
the reforms in the social and political life of England in the  
latter half of the 19th century were largely due to their teach-  
ing. The individualists defined the end of the state as the  
maintenance of law and order. According to them, the main  
business of the state is to prevent and not to direct or promote.  
But the view of the individualists is now held to be a partial  
one inasmuch as the state is no longer considered as a mere  
police-man but a universal organisation of mankind calculated

to promote the diverse interests of men's life. Other writers have pointed out that the end of the state is progress. But the word *progress* is rather vague unless a definite end of the state is fixed. Many modern writers proclaim that the state is a social service organisation whose main function is to promote the social interests of the people including the rendering of services like public health, maternity services, poor-relief, elevation of the moral character of the people, promotion of economic interests, etc. Most of the modern states undertake the above functions which are considered as essential. But this view is not tenable because it does not make it incumbent on the state either to maintain internal peace and order or to prevent foreign aggression. Each of the above ends may be regarded as partially true but none of them may be said to be a complete conception of the true ends of the state. Prof Garner classifies the end of the state as follows —(i) Primary, (ii) Secondary and (iii) Ultimate. According to him, the primary or immediate end of the state consists in the preservation of peace, order, security and justice among the citizens composing the state. The existence of the state can be justified only by its capacity for achieving these ends. In the *second* place, the state must look beyond the needs of the individual as such to the larger collective needs of society—the welfare of the group. The state must promote common welfare because this cannot be done by individuals either acting singly or through group efforts. The state must do everything which perfection of national life requires. *Thirdly*, the promotion of civilisation of mankind at large may be considered to be the ultimate and the highest end of the state. This is the Mission-of-civilisation Theory of the German Nationalists. Prof Burgess also classifies the ends of the state into primary, secondary and ultimate. The establishment of good government, the development of national life and the perfection of humanity are the triple ends of the state.

**Theories of State Functions.** The state, as we have seen, is the highest political agency for the fulfilment of common needs and the furtherance of the general welfare of society. Now the question is what should be the proper sphere of state activity,—what functions should the state exercise for achiev-

ing its ends? There are two conflicting theories regarding the functions of the government, viz., (1) Individualistic or the *Laissez-faire* Theory, and (11) Socialistic Theory. Before discussing the above two theories, let us discuss another theory known as the Anarchist Theory

**Anarchism.** The theories regarding the functions of the state swing between two opposite extremes. At one extreme stand the Anarchists who regard the state as a positive evil and a great inequity, at the other, are the Socialists who regard the state as a positive good and an essential institution for promoting the material, moral and intellectual life of man.

The Anarchists fling out the most emphatic challenge to the authority of the state which, according to them, rests solely on coercive power and as such greatly detrimental to the spontaneous development of a man's personality according to his free will. Anarchism means no rule. The Anarchists argue that all forms of government, democracy not excepted, exact obedience by the threat of force which is the essence of the state. Hence the Anarchists want to bring about the complete abolition of the state in the absence of which will emerge a state of society "in which the rule of each individual by himself is the only government the legitimacy of which is recognised—one in which he is not coerced into co-operation for the defence of his neighbour." The Anarchists want to abolish the state not only because it exercises compulsion upon the individual without his consent but also because of the social injustice and inequality which the state promotes. They condemn the state for fostering by means of propaganda hatred in the minds of its own citizens against the citizens of other states, thus bringing matters to such a pass that war becomes inevitable. They hold the state responsible for the destruction of human race and human peace and progress. Therefore the sooner the state is abolished, the better it is for mankind.

There are two schools of Anarchists who, while agreeing with each other in their unqualified condemnation of the state and in their zeal for its complete destruction, differ in respect to the means to be employed for abolishing the state. The Philosophical Anarchists including intellectuals like Tolstoy and others have inculcated a point of view which, to some

extent, stands to reason. They are not opposed to all governments as such but only to those governments which coerce the individual to obedience. They emphatically assert that the state should secure the co-operation of the individual only with his consent and not by the application of force. Quite unlike the Revolutionary school of Anarchists, this school advocates the employment of literary propaganda and argument for convincing the people of the utter uselessness of the state. The other school of Anarchists—the Revolutionary School led by Prince Kropotkin, Bakunin and Proudhon—advocates the use of force for destroying the state. They go to the length of suggesting the assassination of government officials and the destruction of government property by violent and underhand methods.

**Evaluation.** The Anarchists' doctrine, if closely analysed, will appear to be not only exaggerated but also unjust, and not borne out by modern trend of social evolution. But the Anarchists have done a distinct service by rightly pointing out some of the gravest omissions and commissions of political institutions in so far as they have failed to prevent force, fraud and negligence of duties towards the governed on the one hand and on the other, they are guilty of fostering social inequity and injustice. The doctrine is valuable from another point of view in so far as it emphasises the supreme importance of the development of the individual which should be the true end of all states. But the Anarchists err by attributing to human nature a perfection which it cannot claim. The Anarchists unduly exaggerate the shortcomings of the government without considering the beneficial results of well-meaning state regulation and control. They forget the fact that all the activities of the government are not directed through compulsion rather a great part of it is in the form of aid, assistance, direction and promotion. It is for these beneficial activities that now-a-days the sphere of state-regulation is gradually increasing. Men have learnt to regard the state as the only essential institution which can not only ensure the enjoyment of true liberty but also can promote the diverse interests of their life.

**Individualism.** Individualism is a mild form of the doc-

trine of Anarchism. Unlike the Anarchists, the Individualists regard the state as a necessary evil. According to them, the state exists because crime exists. So long as men are imperfect, the state cannot altogether be done away with. As the state is essentially an evil, the Individualists seek to restrict the sphere of its activity to the narrowest possible limits. They regard all sorts of restraints as an evil, and every extension of the power of the state as an infringement on individual liberty. The main function of the state is to protect the life, liberty and property of its citizens against violence and fraud. Its main function is therefore to prevent and to direct or promote. The state is, therefore, according to the Individualists, no more than a mere police organisation which must not pretend to promote human happiness by its various activities but should strictly confine itself to what is necessary for the protection of the individual. In short, they point out that the most important duty of the state is to keep itself aloof from social activities. It must leave industry, education and morality alone. They are intolerant of the least interference with the liberty of the individual on any ground whatsoever. The individualists therefore attribute to the state only a negative function, denying altogether its capability of doing good to the individuals.

The doctrine of individualism which came in the wake of Industrial Revolution as a protest against excessive state interference became prominent towards the end of the 18th century. The physiocratic school of economists was the most ardent advocate of a policy of non-interference by the state in economic matters. In England, the doctrine found in Adam Smith, Ricardo and Malthus its ardent supporters, all of whom denounced state interference in economic matters, impeding the free play of demand and supply.

J S Mill, an ardent advocate of the Individualistic theory, holds that the happiness of the individual varies inversely as the extension of state-authority. He advocates the complete freedom of action of the individual in regard to his self-regarding actions, i.e., actions which concern himself alone. The state is justified only in controlling his other regarding actions, i.e., actions which concern others and this control should be exercised only when these actions of the individual are likely

to injure others. Herbert Spencer also utilised the biological doctrine of the survival of the fittest in support of the doctrine of Individualism.

**Arguments for Individualism.** The theory of Individualism has been based on the following grounds: *Firstly*, the Individualists seek to support their theory on the ground of natural justice. The Individualists hold that a man is the best judge of his own ability and interest. He should therefore be given the largest amount of freedom to work out his own salvation. State-interference kills his self-reliance and impairs his energy and capacity for work. The state should leave the individual free to chalk out his own line of action so that he may develop his own faculties and acquire what he wants. *Secondly*, the Darwinian theory of evolution is imported in support of the theory of Individualism. The natural law of the survival of the fittest is impeded by the action of the state. State-intervention acts as a support for the weak and the unfit. But in the absence of state interference, the weak and the unfit will be eliminated in the struggle for existence, leaving only those who are fit to survive. *Thirdly*, the doctrine is supported on economic ground too. The Individualists argue that competition is a much better principle than co-operation and as such, trade and industry will flourish better if left to private initiative. Better results in the sphere of commerce and trade will be ensured by the complete freedom of trade and industry. *Fourthly*, the Individualists base their theory on empirical grounds. Experience shows, the Individualists argue, that the state is not infallible. It has miserably failed in the past to give a correct lead to the individual. The laws passed by the state were often useless or pernicious. *Lastly*, the theory is based upon the ground of state incompetency. The Individualists maintain that the individual knows his interests best and therefore the state is quite incompetent to meet the needs of the individual. A work done by the individual in his own interest will be better done than when done by the state in the spirit of paternalism.

~ **Criticism** Individualistic theory of state function has been subjected to a good deal of criticism. *Firstly*, the theory errs by regarding the state as an evil. Some policies or actions of



the state may appear to be prejudicial to the interests of the individual but on that account we must not think that the state is utterly incompetent and has done nothing to promote individual interests. The part played by the modern state in the material, moral and intellectual progress of its citizens will prove the utter hollowness of the assumption that the state is an evil. *Secondly*, the individual is not always the best judge of his interest. He does not always understand what is best for him. In every state, there are illiterate and ignorant masses who do not know the pernicious effects of bad sanitation, unwholesome food and unhealthy recreations. Even educated people sometimes behave in a way prejudicial to their own interests. This conduct on the part of the individual suggests that it is in the interests of the individual that the state should direct and control individual actions. *Thirdly*, the theory of the Individualists is based upon a wrong assumption that the state is hostile to liberty. True liberty cannot exist outside the state. Well-regulated state actions, far from curtailing the liberty of the individuals, help all to enjoy liberty through discipline and restraint. Thus it has been well-said that "The recognition of political authority is the indispensable condition of liberty." *Fourthly*, the biological argument as advanced by the Individualists is unsound. The state as the highest form of human organisation has a positive as well as a negative duty. The Individualists object to public charity because it helps the weak and the needy. But they forget the fact that if the state is justified in punishing a man for committing theft, it is equally justified in providing employment to the unemployed which is its positive function. Besides, the weak and the incompetent when aided by the state may turn to be better classes of citizens. *Fifthly*, the Individualists unduly exaggerate the evils of state regulation and minimise the advantages of co-operation and regulated efforts. State help and state regulation have proved to be of great value to the industrial development of many countries notably of Germany and Japan. *Finally*, with the gradual increase in the complexity of modern society, the necessity for increasing state regulation is constantly being felt in every aspect of a man's life. Thus the practice of modern states invalidates the doctrine of Individualism.

The theory of Individualism is no longer accepted as the true theory regarding the functions of the state. The main defect of the theory lies in the fact that it overlooks the advantages of well-meaning state regulations for promoting the collective interests of the community. But it has done a distinct service to modern political thought by duly emphasizing the importance of individual liberty. The theory rightly points out that the state should not be regarded as omnipotent and infallible and that excessive state paternalism leads to the suppression of the moral and intellectual capacities of the people.

### **Modern Individualism.**

As a protest against the nineteenth century individualism which was intolerant of the least interference of the state with the activities of the individuals, especially in economic matters, came the absolutist and collectivist theories which made the state omnipotent, omniscient and infallible. As a result of the teaching of these theories, the state grew into a veritable 'Leviathan' with a mystic super-personality attributed to it and extended its long arm over every sphere of human life with the result that individual will was lost in the 'real will' of the almighty state. *Secondly*, the invention of parliamentary government ushered into existence an era of despotism of the few in the name of rule by majority party so much so that the people were anxious to escape out of this new despotism. *Thirdly*, the huge destruction of life and wealth caused by the two World Wars made people seriously question the utility of the state or at least made people conscious of the fact that the limited state should not be given an unlimited power. *Fourthly*, the gradual extension of the functions of a modern state relating to all spheres of human life has made it necessary for the state to discharge its varied functions through a highly centralised bureaucracy which, by the very nature of its organisation and function, is not at all responsive to public opinion and is the least affected by it.

All the above factors combined have made the modern state a universal compulsory organisation which claims to exercise a paternal control over the individuals. Modern individualism has come as a protest against excessive state-paternalism which

has reduced the individual practically to non-entity. So the revival of individualism in a new form is an attempt to redefine the position of the individual in relation to the state. The theory of state-paternalism came as a protest against nineteenth-century individualism and the revival of individualism in a modified form is an attempt to counteract the tendency to extreme state-paternalism. So modern individualism may rightly be regarded as a reaction against reaction.

Modern individualism asserts that the present 'over-developed state' which simply pretends to be a man of all work can neither provide satisfactory means for the representation of the popular will nor adequate opportunity to the individual for the fullest development of his personality. Hence the modern individualists, like the pluralists and the guild socialists, emphasize the importance of groups within the State. These groups, consisting of smaller number of men and pursuing limited ends, are far more competent than the state to safeguard the interest of the individual and also to promote the common interests of their members.

The chief exponents of modern individualism are Norman Angell, Graham Wallas and Miss Follett who are all unanimous in their denunciation of the activities of the modern state, although they differ with regard to the means by which state-paternalism can be curbed. Norman Angell accuses the modern state for misguiding its citizens by misconstruing the real facts. People are always made to think in terms of national interest at the cost of the interest of humanity at large, the promotion of which can only bring peace and happiness to the individual. He therefore urges the imperative necessity of the establishment of an international society organised on the basis of economic class.

Graham Wallas also denounces the modern state. His principal target of attack is the parliamentary system of government which, in the disguise of democracy, seeks to perpetuate the rule of the few over the many. He proposes to mitigate the evils of modern democracies by the introduction of vocational representation and decentralisation of powers.

Miss Follett in her celebrated work 'The New State' has made an admirable attempt to redefine the position of the indi-

vidual in the state While the guild socialists and most of the pluralists have practically ignored the individual on the one hand and the state on the other, Miss Follett has sought to define the relation between the state, the group and the individual on a rational basis. She emphasises the importance of the group so much so that she regards the group as the only mechanism through which "Man discovers his true nature, and gains his true freedom" but at the same time she asserts that the individual, the group, the state—they are all there to be reckoned with—we cannot ignore or minimise any one. The individual fulfils the diverse interest of his life through group activities and the duty of the state is to unify the activities of the groups. So the individual, the group, the state—all of them are real and have a part to play.

**Socialism.** Socialism, it has been said, is the antithesis of Individualism. The supporters of the theory regard the state as a positive good and hence contends for a maximum rather than a minimum of government. Socialism came by way of protest against the injustice and incompetence of Capitalism which led to the ruthless exploitation of the propertyless people by the propertied class. Socialism, it should be remembered, does not minimise the importance of individual liberty. It attaches equal importance to individual liberty which is necessary for the fullest development of individual's character. But Socialism differs from Individualism in this that the former maintains that the interests of the individual can be best promoted by maximising the control of the state, while according to the latter, the above ends may be secured by curtailing the functions of the state to the narrowest possible minimum. Thus the two schools of thought differ more in their political methods than in the legitimacy of ends.

Socialism is both an economic and a political doctrine. It seeks to abolish private ownership of the means of production on the ground that such ownership and management lead to social inequities and incompetence. Hence the Socialists want to promote the common economic, moral and cultural interests of the people by substituting for the present individualistic society, public ownership and public control in the sphere of production and distribution. The present order of society is

marked by private ownership of land, mines, factories, railways, etc., the proprietors of which use these means of production for the purpose of making the largest amount of profit for themselves. Under the present capitalist system of production, the decision as to what and how much to produce is decided solely by consideration of private profit, the whole of which is appropriated by a small section of the people. But under socialism, these means of production will be operated by the state with a view to securing the maximum benefit to society. State ownership and state management of production will not only prevent the exploitation of the many by the few but it will also usher in a new order of society where every decision with regard to what and how much to produce will be made by considerations of usefulness of such things to society. The state will maintain a central planning committee which will develop and co-ordinate the different branches of production. The productive forces of the country which are now operated blindly only to promote the private interests of their owners, will, under a socialistic state, be operated to serve the best interests of the society as a whole. Thus socialism which grew out of the dissatisfaction against the present social system seeks to reconstruct society economically and politically on a new basis. Socialism which was so long a politico-economic doctrine has assumed great practical importance on account of the communist experiment in the U.S.S.R., the achievements of which have inspired the people of different countries for a change in the existing order of society.

**Different forms of Socialism** There are different schools of Socialists, each of whom prescribes definite plans for the realisation of the Socialistic ends of the state.

(1) **Utopian Socialism.** This is the oldest form of Socialism which appeared for the first time in the writings of Plato. Plato, in his *Republic*, describes the state as it ought to be rather than the state as it is. According to Plato, the best form of society is one in which the words 'mine' and 'not mine' are equally applied to the same object. But Plato's scheme of Socialism which advocates equality of wealth was confined only to the ruling classes who would have neither private property nor family life. Plato's *Republic* furnished

a basis for many later Socialistic writers, notable among whom, was Sir Thomas Moore. In his *Utopia* published in 1515, Moore gives us a picture of an ideal state in which there is no private property. Men live under the direction of elected officers who regulate their lives so as to ensure simplicity of habits and sufficiency for all. In France, St. Simon and others also planned their scheme on an ideal basis. In England, Utopian Socialism found in Robert Owen an ardent advocate who drew up a scheme of a new society for the relief of the poor. But all these experiments turned out to be impracticable and therefore without exception were complete failures.

(2) **The Scientific or the Marxian Socialism.** The different schools of modern Socialism derive their strength from the writings of Karl Marx whose classical work *Das Capital* is still regarded as the Bible of the Socialists. The theory of Karl Marx is mainly based on two propositions, viz., the theory of surplus value and the materialistic conception of history. According to Marx, labourers produce more than what they get as their wages from their employers. These capitalist-employers buy the service of labour and produce goods which they sell in the market at a rate higher than the amount spent for the payment of wages and upkeep of the factory. The difference between the exchange value of goods produced and the remuneration paid to the workers for their labour measures 'Surplus value,' the whole of which is appropriated by the Capitalist class as their profit. Thus profit is nothing but legalised robbery. Labour, according to Marx, is the sole cause of value and what is called profit accrues to the employer simply by the process of depriving the labourers of the full value of their labour. Marxian Socialism seeks to root out the evils of modern capitalistic system of production.

His second proposition is based on the materialistic conception of history. According to him, human society is not static but is constantly moving towards new order according to the needs of new economic conditions. The entire social structure of a country—its political institutions, law, custom, religion and morality are determined largely by the material conditions of life of which the system of production is the

main determinant of the political structure. All social and political history is the outcome of the conflict of economic classes. The old order of society was marked by the complete domination by the Capitalist class of the working classes who were ruthlessly exploited by their employers with modern machinery and land in their possession. Thus there is a perpetual conflict of interests between the Capitalists and the labourers. [The most prominent feature of modern society is therefore the class-struggle which will terminate only with the overthrow of the Capitalists by the labourers.] Marx therefore lays down that labourers should be organised for securing Parliamentary majority which will enable them to mould the present capitalist society on a socialist basis. The victory of the working class will be followed by the elimination of the Capitalist from the field of production and a new order of classless society with state-directed industries will emerge out of the old. Marx, however, did not preach any scheme of violence for the seizure of power by the Proletariat. He believed that power would pass on to their hands in the natural course of evolution.

Marxian philosophy has been subjected to a searching criticism in recent times. The materialistic interpretation of history as put forward by Marx is a narrow view which completely ignores the importance of forces like religion, geography, greatness, etc. which have played their part in history. *Secondly*, his proposition of a long continued class war is out and out pessimistic and contrary to the fundamental social nature of man. *Thirdly*, the labour theory of value as expounded by Marx is not accepted by modern economists who point out that besides labour, other factors like competition, relation between the conditions of demand and supply must be taken into account in determining the value of a commodity. *Fourthly*, Marx has proved a false prophet with regard to his prediction about evolution and the inevitability of communism. Lastly, Marxian communism as a working principle is neither desirable nor practicable. Even in Russia, the communists found it difficult to adhere strictly to the Marxian principles and hence they had to deviate from the ideals in certain important respects.

The different interpretations put upon the doctrine of Karl

Marx by different Socialist writers have given rise to two opposite schools of Socialism, viz, *the Evolutionary and the Revolutionary Socialism*. These two schools differ from each other both as regards their aims and methods. The advocates of the Evolutionary school are variously known as Collectivists, State Socialists, while those of the latter as Syndicalists, Guild-Socialists and Communists.

(3) **Collectivism.** This school advocates state ownership of industry. It seeks to introduce social and political reforms by constitutional methods without resorting to violent means. The Collectivist programme consists in the gradual and progressive transformation of society from the Capitalistic to the Socialistic basis. They insist upon the abolition of class privileges and enforcement of laws beneficial to the Proletariat class.

(4) **State-Socialism.** The doctrine of Collectivism appeared in Germany in the form of State-socialism which regarded the state as the best agency for looking after the interests of the workers. The advocates of this theory do not want a complete socialisation but they require state control only to protect the weak from the strong. As the workers cannot take care of themselves, State-socialism seeks to protect their interest by such legislations as old-age pension, workmen's insurance, and factory legislation.

(5) **Fabian Socialism.** In England, the doctrine of Socialism took a different form known as Fabian Socialism. The Fabian School claims as its supporters some of the great intellectuals of modern England like G. B. Shaw, G. D. H. Cole, Sidney Web and Laski who have given the British labourers a definite economic and political programme. The Fabian School believes that the Socialist programme can be enforced not by violent method but by gradually convincing the people of the benefits of Socialistic type of state. This they believe, can be done by literary propaganda. In actual practice, the Socialistic teachings of the Fabian School propagated among the masses mainly through pamphlets and the stage have succeeded in creating an anti-capitalist feeling in England. The Labour party in England has accepted some of the programmes of this school, viz, taxation of inherited wealth and unearned



income The Fabian School never undertook any active political work excepting propaganda and with the emergence of the Labour party, this school has practically retired from the field

(6) **Syndicalism.** In France, Socialistic ideas were crystallised into a novel form known as Syndicalism. The doctrine of Syndicalism has been influenced more by the teachings of Proudhon than by those of Marx. Syndicalism is a form of militant trade unionism with socialistic programme. It is allied with Socialism in the sense that it regards capital as theft and contends for the complete abolition of private ownership of the means of production. It differs from Socialism in this that it regards the state as hostile to the interests of the working classes and hence the Syndicalists advocate the abolition of the state. According to them, the Trade Union is the foundation of the new society and it will regulate not only the economic but also the political and social life of the people. The Syndicalists, unlike the Collectivists, are revolutionary Socialists who want to bring about the downfall of Capitalism by resorting to violent methods as strike, and various other methods of sabotage. Syndicalism is based on three main principles, viz, (a) Labour is the sole source of wealth, (b) the wage-earners have the right to own and control industrial concerns and (c) this they should do by resorting to strikes.

(7) **Guild-Socialism.** It is a form of Socialism which seeks to make a compromise between Syndicalism and Collectivism. It advocates a theory of state ownership of industries but rejects their state management on the ground of the incompetency of the state in regard to management. Thus it differs from Syndicalism in this that it does not propose the abolition of the state. The underlying principle of Guild-Socialism is that it emphasises the importance of different functional groups in a community through which the various interests of the individuals are to be safeguarded. In short, Guild-Socialism advocates *functional democracy* which implies that the trade-guilds which are to assume the direction of industries, should work in conjunction with the various other functional associations which will regulate the many-sided social life of the individuals. Thus it also differs from Syndicalism in this that

it recognises, besides trade-guilds, other associations in a community.

(8) **Christian Socialism.** This school regards competition as the source of most of the evils among the working classes and hence it wants to improve the condition of the working classes by introducing co-operative production of workmen's associations.

(9) **Communism.** The form in which Communism has appeared in modern Russia is based entirely on the doctrine of Karl Marx. It is the extreme and violent form of revolutionary Socialism which 'springs from the despair of conquering political power by peaceful means'. It advocates the capture of political power by force and its subsequent employment as an agency to crush the remnants of Capitalism. Communists and Anarchists agree in so far as they regard the abolition of the state as their ultimate aim but Communists differ from the Anarchists in this that they do not press for the immediate abolition of the state as the Anarchists do. The Communists argue that with the gradual perfection of the individual through communistic organisation of society, 'the state will wither away' in the natural process of evolution. Communism differs from Socialism in this that while Socialism seeks to establish only state ownership of all the means of production and distribution, Communism advocates common ownership of all things and hence it seeks to abolish private property. The aim of Communism is to build up a classless society in which every man will get adequate opportunity for self-development and self-expression and in which "none shall eat who does not earn his bread by the sweat of his own brow". Thus it seeks to prevent the exploitation of one class by another and ensures economic sufficiency for all by enforcing the principle that each shall work according to his capacity and receive back according to his need.

Closely following Marx, Lenin, the maker of modern Russia, states that the attainment of full communism involves two stages, viz, (i) the Revolutionary stage and (ii) the Post-Revolutionary stage. The first phase of the Revolution is characterised by the seizure of political power by the Proletariat by the application of force and its subsequent employ-

ment to squeeze out from society the last remnant of capitalism. In this stage the state assumes the character of a class state, namely, that of the Proletariat who adopt a policy of gradual extension of public ownership by confiscating private ownership. No special privilege is allowed to exist and everybody is made to work in accordance with the principle, "He who does not work neither shall he eat." Everybody is to work according to his ability and everybody gets back according to his work. Money will still act as a medium of exchange in this stage.

The communists believe that with the gradual elimination of the last remnant of capitalism a new order of society will emerge when everybody will be inspired by such a sense of social responsibility that each will contribute his best to the social whole, there being no necessity of state compulsion. In this stage, all the productive forces of the state will be so fully developed that everybody might be allowed to get back according to his need. There will be no more necessity of money as a medium of exchange, for everybody acting out of a sense of social responsibility will receive according to his need. The advent of this stage marks the final triumph of communism when the state will no more be considered as a necessity for regulating the activities of men who become self-guiding and above all are inspired by a common consciousness of social good. The state therefore will wither away.

Thus, according to the communists, the overthrow of capitalism alone cannot create communism. For the attainment of full communism conscious and intelligent efforts are to be made.

For a proper appraisal of Russian Communism, one should not lay emphasis only on its initial destructive phase but also take into account its subsequent constructive activities. A new system of education introduced by the Bolshevist leaders ushered into existence a new order of society which ensured to each individual hitherto neglected an honourable position as a useful member of the community. Men and women were given a training which enabled them to rise above their selfish personal happiness. When the human material was properly shaped, the Communist leaders set themselves

to the task of economic regeneration of the country on the basis of a number of successive Five-year Plans. The initial difficulties were almost insuperable but the Communist leaders proved far too strong and in the course of twenty-five years, they succeeded in transforming a very backward country into one of the most advanced countries of the world.

### **Difference between Marxian Communism and Russian Communism**

During the initial stage of the Revolution, the Russian Communists under the leadership of Lenin, tried Communism in its literal form. Private property was abolished and nationalisation was extended to the fields of production, distribution and consumption. The cry was—"all powers to the Soviets consisting of the peasants', workers' and soldiers' deputies." The Communist experiment in Russia was based on the original Marxist ideal. But during the course of its working, the Russian Communists realised the difficulties in the way of the realisation of the Communist ideal in practice. They, therefore, modified their methods and to some extent deviated from Marxist programme. Marxism was essentially international in its scope and implication but Russian Communism under Stalin was apparently nationalistic in its scope. Marxism advocates the complete abolition of private property and private enterprise but Russian communism had to make a compromise with these institutions, though in a limited sphere. The Stalin constitution of 1936 have guaranteed to the Soviet citizens the right to personal property—"in their incomes and savings from work, in their dwelling houses and subsidiary home enterprises in articles of domestic economy and use and articles of personal use and convenience, as well as the right of citizens to inherit personal property." Again, Russian communism is no longer intolerant of religion which has been given state recognition. Communist Russia is freely coming in contact with non-communist countries—countries which differ fundamentally from its ideologies. She fought against Germany as an ally of capitalist countries like Great Britain and the USA. These are facts which go to prove that she is not thinking in terms of Marxian ideal of international socialism but in terms of her own security, power and progress.

**Fascism.** Fascism is not a form of Socialism, although it bears some superficial resemblance to Communism. Fascism comes from the Roman word, *fasces*, which means a bundle of rods and axes. These symbolise the authority of the state. To understand the Fascist philosophy in its true significance, it is necessary to go back a little in Italian history. The Italian Government which was set up on the basis of constitution of 1848 was modelled on the Government of Great Britain, with a constitutional monarchy and a ministry responsible to Parliament. But it became evident even after the unification of Italy in 1871 that the British model did not suit the genius of the Italian people. The use of multiple party-groups was a detriment to order while ministerial instability acted as an impediment to progress. The result was inactivity and inefficiency on the part of the government which miserably failed to tackle the problems that came in the wake of armistice after the First World War. There was chaos everywhere in Italy during this period. Workers began to seize factories, peasants forcibly took possession of their landlords' land and the rail-road workers abstained from their duties. The ministry did nothing to bring things to their normal and the inevitable happened. Instead of going the way of Russia, Italy chose to be a Fascist state under the leadership of Benito Mussolini, who promised the Italian people the restoration of order, national solidarity and above all, a strong government for the revival of Italy's lost position in International politics. Thus Fascism, like Russian Communism, was born of the conditions created by the First World War. It came by way of protest against the injustice and incompetency of post-war democratic government of Italy. Hence it is no wonder that Mussolini, the Fascist dictator had nothing but absolute contempt for Parliamentary democracies of England and France.

Fascism is a political creed which believes in the Totalitarian State. The state is identified with society and both of them are regarded as the ends. According to the Fascists, the state is "the recapitulating unity of an indefinite series of generations." A nation does not belong to the people who inhabit it at a particular time. The present generation simply holds it as a trust. Thus Fascism regards the nation as the

ultimate thing in evolution. The nation is something more than a mere aggregate of individuals who come and go without affecting the social unity. But the nation endures and is always identified with the social unity. Fascism does not brook Individualism in any form. The individual is merely a tool in the hands of the state which can use him for furthering its ends. Political authority, according to the Fascists, is with the national state and not with the people. It is essentially aristocratic and autocratic in character because only a minority of the nation has the competence to speak and act for national interest. In a Fascist state, individual rights are recognised in so far as these rights coincide with the interests of society and the state as a whole. Fascism, therefore, differs from modern cults in this that it does not believe in the rights of citizens either in their individual or collective capacity. It rejects the notion of popular sovereignty for state sovereignty which is to be exercised by the chosen few capable of subordinating their individual interests to those of society. Fascism is also opposed to all forms of Pacifism and preaches Imperialism through war. "War is to man what maternity is to woman." Fascism advocates functional representation not of individuals but of groups and corporations which are to be organised for safeguarding the various interests of the different classes in society. It is also anti-Communist in the sense that it does not support the doctrine of class struggle nor does it permit a single class to rule. The government must be supreme and it should be so constituted that every class and every interest get a fair share of representation on it. Fascism resembles Communism in this that both of these creeds are based on the dictatorship of a single party which ruthlessly exterminates all other parties. Political power in both the systems is seized by force and is also maintained by force. It has often been asserted that "Communism is a dictatorship of the worker while fascism is a dictatorship of the employer." But this is not true. Fascism is intolerant of rule by any particular class, either workers or employers, rich or poor but it makes the government supreme and which should be so constituted as to represent all classes and interests, not only in political affairs but also in the social and economic life of the people. Fascism is, in every way, opposed to the ideals of Demo-

cracy which seeks to establish a regime of equality and freedom for the individual. It is based essentially on force and an authority which is based solely on force without any reference to common good is sure to perish by force. Italian Fascism, in spite of its brilliant success in certain respects, ended in a tragic futility and is interred with the bones of the *Duce* in the Italian plains where it was born.

**National Socialism or Nazism.** There is very little difference between the ideals of Italian Fascism and German Nazism. The distinguishing mark of the German Nazism is the theory of purity and superiority of the Aryan race. The preservation of this racial purity is the governing principle of the Nazi state. But Fascism has no such doctrine of racial superiority, although Mussolini dreamt of the glorious days of the Roman Empire. Both regard the state as an end in itself and completely subordinate the individual to the state organisation which is supported by a single party. Both aim at national self-sufficiency and national supremacy. Both Nazism and Fascism leave little in the hands of the individual whose life in every sphere of existence is controlled and regulated by the state. Propaganda plays a very important part in disarming every conceivable form of opposition. Practically, they brook no opposition which is relentlessly put down by the method of 'blood and iron'. Both these modern political creeds rose with dramatic suddenness and had a meteoric fall. They were tried and found wanting in moral values and have therefore been given a decent burial.

**Arguments for Socialism.** The case for Socialism is based on the following arguments —

*Firstly*, Socialism challenges the Individualistic doctrine on the ground that the interests of the small producers and labourers are at stake under Capitalism which leads to the exploitation of the Proletariat class. Under the present system of economic organisation the labourers are deprived of the legitimate shares of the fruit of their toil and the Capitalist class thrives at the expense of the labourers. The inauguration of the Socialist regime will improve the condition of the have-nots by preventing their exploitation by the haves.

*Secondly*, the Socialists argue that there are wastes and extravagance involved in competitive methods of production. Over-production, under-sale, combative advertisements which are inevitable concomitants of the competitive methods lead to losses and economic wastes. Socialism seeks to replace competition by co-operation and thus to prevent losses and wastes.

*Thirdly*, the doctrine of Socialism is based on the principles of justice and right. The free-gifts of nature like the land and the mineral resources, under Socialism, will be owned and controlled by the state for general welfare and not for private gains as under Capitalism.

*Fourthly*, the Socialists argue that the welfare of the individual is inseparably connected with, and dependent upon, social welfare. The welfare of the individual can best be promoted by securing the greatest good of the greatest number. It is only in a Socialistic regime that the ideal can be realised.

*Fifthly*, real Democracy is impossible without Socialism. The principle of Democracy has already been introduced in the political sphere, but political democracy is ineffective and unsatisfactory unless it is supplemented by economic democracy which implies "freedom from want and freedom from fear". It is only a Socialistic regime which can help the growth of the democratic ideal by substituting state ownership and management for private ownership and management.

Finally, Socialism rightly emphasizes the value of co-operation in the methods of production. Co-operative methods have attained remarkable success in modern times and the system is being gradually extended to a variety of directions. The state has already eliminated competition in certain fields and state ownership and state-management of certain industries have produced better results than private management. The theory is justified by the gradual extension of state-functions in modern times. In conclusion, it may be pointed out that Socialism is based upon altruistic and moral principles inasmuch as it seeks to establish a regime in which everyone is given an opportunity to reach his best self, in which the governing principle of life is 'Live and let live'.



**Criticism.** The doctrine of Socialism has been assailed from many points of view. In the first place, it is pointed out that the Socialist ideal is harder of realisation in actual practice. The state is neither omnipotent nor infallible and there is a limit to its capacity. The Socialist therefore unduly exaggerates the capacity of the state as an agency for human welfare. *Secondly*, the abolition of private ownership is likely to kill the greatest incentive to work. Collective ownership will fail to stimulate individual efforts and prevent the unfolding of genius in different walks of life. *Thirdly*, Socialism will lead to the curtailment of individual liberty and demoralisation of his personality. Under Socialistic regime, the individual will have little scope for self-development and self-expression owing to the growth of state paternalism. *Fourthly*, Socialism errs by regarding the individual more socially-minded and socially-conscious than he actually is. The average man has neither the willingness nor the consciousness of common good which ensures the success of the Socialist programme. Due to the lack of this common consciousness that some parts of the Communistic programme had to be abandoned in Russia. *Finally*, Socialism is criticised as being ethically unsound and socially pernicious. The ideal of Socialism has its origin in utilitarian and materialistic considerations, having no reference to any "eternal law of truth and rights". It is a doctrine which seeks to put a premium upon idleness, incompetence and chronic poverty while intelligence, boldness, self-help and industrial leadership are all at a discount. "Socialism makes it more profitable and pleasant to be a pauper than to be a producer."

### Capitalism.

The term 'capitalism' in the sense in which it is used now was practically unknown in any other time previous to the latter half of the nineteenth century. The term is now employed to denote a particular economic system to which is attributed all the evils of modern social organisation. Hence the term is very often used in a derisive or contemptuous sense.

Generally speaking, the term capitalism is now used to denote an economic system which came in the wake of the

Industrial Revolution in England during 1760-1820 and gradually spread all over the world. As a result of the great changes brought about by the Industrial Revolution in the field of production, small-scale production was gradually supplanted by large-scale production with the use of machinery and steam and electric powers. Large-scale production requires the investment of huge amount of capital and as the labour class is not in possession of the necessary amount of capital, a small number of persons becomes the owner of the necessary means of production and buys the services of labour with the capital at their command. In this way the whole system of production passes on to the hands of the small capitalist class and the labourers are reduced to the position of wage-slaves having no share either in the management or in the profit of production. This system of production gradually concentrates all economic powers in the hands of the capitalist class who with economic power at their disposal captures political power. Thus the rule of the capitalist class is firmly established in every sphere of social life.

Not only are the factors of production and the finished goods regarded, under this system, as the property of the capitalist class but the right to own also, passes on to their heirs. Thus the hereditary right to own the means of production by one particular class places them on an advantageous position which enables them to perpetuate their hegemony by enriching themselves at the cost of labourers. In course of time, the system gives rise to two opposing classes in society—the haves and the have-nots—who fight each other, the former anxious to protect its vested interests and the latter to have an equal share in the profit of production which they consider to be their legitimate claim.

Capitalism may be easily distinguished from feudalism, the system which preceded it and also from socialism which is almost on the point of supplanting it by three of its characteristic features which are (a) Freedom of enterprise, (b) Private property, and (c) Sovereignty of consumers.

Under capitalism, any person may be engaged in any occupation of his choice which is not restricted either by the rigour of any hereditary caste or by any state law. The free-

dom of enterprise enables a man to enter into contract freely with other persons with a view to ensuring his personal gain. His right to own, inherit and transmit property is recognised by law and he is free to buy and sell in any market he likes. The system ensures not only freedom of the producer, it also ensures to the consumer full freedom of choice—to buy, commodity in any market. Free competition between buyers and sellers brings about equilibrium between demand and supply by making one price prevail in the market. Under perfect capitalism, there is no central agency to regulate production and consumption and the absence of such an agency makes the free play of competition possible as a result of which production and consumption conform to price which, in its turn, attains normalcy by the interaction of the forces of demand and supply.

Modern capitalism is characterised by certain other features, the most marked of which is the use of the entrepreneurial class who organise the business but do not take the risk involved in it. The risk is borne by those who supply the capital but do not manage. Hence in modern business management, this separation of organisation from enterprise has led to some amount of irresponsibility on the part of entrepreneurs who are often callous to the interests of the shareholders. Although the Capitalistic system is marked by free competition between buyers, sellers and labourers, yet sometimes each of these classes combine together to safeguard its class interests. Such combination has given rise to trade union among labourers, producers' combination in the form of trust and cartels, and also various forms of consumers' association.

### **Merits of Capitalism.**

The advocates of capitalism assert that free competition which is the characteristic feature of this system leads to the survival of the fittest producers. The most efficient producers can cut down their cost of production and thus the quantity of production increases and the quality improves as a result of which consumers can buy improved quality of goods at cheaper rates.

*Secondly*, the buyers under this system, can buy goods according to their free choice. The existence of full freedom to buy on the part of the buyers makes sellers produce goods according to the taste and demand of the buyers. This free competition between buyers and sellers may be said to be the basis of economic freedom.

*Thirdly*, under capitalism, the system of production is attended with great risk which makes it incumbent on the producer to conduct his business with great care and efficiency. Expert management prevents wastes by securing greater economies in production.

Fourthly, the system works automatically through price-profit mechanism. Hence incompetency, bias and nepotism which are the principal features of bureaucratic management, under socialism, are eliminated by ensuring the management of business by competent men.

*Lastly*, capitalism should not be condemned too severely in view of the fact that the quantity of production, quality of output and the standard of living of the people, have, under this system, improved far more than in the pre-capitalistic times.

### **Evils of Capitalism.**

The greatest evil of capitalism is that it creates inequality of wealth which leads to the division of society into the rich and the poor. In course of time, the poor become the wage-slave of the rich.

Secondly, as a result of the great disparity of wealth, the poor do not get equal opportunity to develop their personality to the fullest extent. In the absence of proper opportunity to acquire efficiency, the poor cannot maintain even a minimum standard of life.

*Thirdly*, capitalism boasts of the full freedom which the consumers enjoy under this system but in reality it is a myth. Under capitalism, consumers' sovereignty is considerably curtailed by advertisement, false propaganda and producers' combinations which dictate price.

*Fourthly*, as has been pointed out above, capitalism operates through the price-profit mechanism and as such the quantity as well as the quality of production is determined solely with an eye to profit without any reference to the interests of the consumers

*Fifthly*, competitive production can never secure economies of production as it necessitates the duplication of services and huge expenses on combative advertisement. The system is wasteful and often leads to overproduction

*Lastly*, the most serious charge against capitalism is that it creates unemployment and brings in business cycles. If the system benefit any body at all, it benefits only the capitalists but ruins the labourers and injures the consumers

The evils of Capitalism may be removed in two ways, firstly, by introducing Socialism and secondly, by introducing *Mixed economy*, i.e., by striking a mean between capitalism and socialism. Socialistic system has its defects too and so it is suggested that instead of uprooting capitalism, it would be better to introduce state control in certain spheres of production and distribution. With this end in view, many of the modern states have introduced taxes on income at a progressive rate, inheritance tax or death duty and a tax on the consumption of harmful and luxurious articles. Many states have already adopted measures for combating unemployment problem, trade cycle and dispute between labour and capital. The crusade started in Russia and China against capitalism has already destroyed the capitalistic system in those countries but in England and in the United States of America, there has not yet been any mass uprising against the capitalistic system excepting occasional strikes on a gigantic scale. But the rulers of these countries, with a view to removing the growing discontent of the masses, have already adopted mixed economy in certain fields of production by making a compromise between Capitalism and Socialism

### **Gandhism.**

Gandhism is not purely a political ideal, far less a distinctive creed which is followed by any sect of men. Unlike other

modern *isms*, Gandhism does not lay down any rigid rules for the guidance of individual or group conduct. What is known today as Gandhism is nothing but his experiments with truth and non-violence which, according to him, are not his own inventions but are 'as old as the hills'. He simply tried to apply these twin principles to the daily life and problems of mankind.

Politics was long divorced from religion and ethics and Gandhism seeks to purify the political life of man by the application of ethical principles which are inherent in man. He believed that the highest ideal of human life could be achieved only by practising truth and avoiding violence. In the field of politics, Gandhism seeks to lay the foundation of government solely on the basis of non-violence. Gandhiji characterised the so-called democracies of the west as so many instruments for the exploitation of the poor by the rich. Liberty, equality and fraternity—the watch-words of real democracy can never exist under a system which is based on violence and injustice. A social order which seeks to create liberty and equality by the application of force can never provide opportunities to its members for the fullest development of their personality. The individual cannot realise his real will when he is coerced for that purpose against his will. Modern political organisations, according to Gandhiji, are based essentially on force which deprives the many from a share in ruling authority by concentrating power in the hands of the few. There is thus no scope for the application of force in Gandhism which seeks to reorganise society making it independent of the state. Gandhism like anarchism has no faith in 'state regulation'. Society, according to Gandhiji, should be a voluntary association of free men on the basis of perfect equality among its members. Only a society thus organised on a voluntary basis by its members can ensure full liberty and equality to its members.

The economic organisation of such a society should be commensurate with its political organisation. Gandhism lays stress on small-scale and cottage industries based wholly on the principle of decentralisation of production. Gandhiji was definitely against the factory system of production which involves the use of machinery in production. The attitude

of Gandhiji towards the use of machinery in production should not however be misinterpreted or misunderstood. Gandhism is not opposed to the use of small tools and machines which the workers can handle freely and which relieve the strain on their muscles. What it really opposes is that particular use of machinery which reduces the workers to the position of wage-slaves. Under the capitalistic system of production, the capitalists and the machine experts utilise the workers solely for the purpose of increasing their profit. They produce only those goods and in such amounts as are calculated to promote their class interests without any reference to social good. True it is that the workers are paid in money, but they are deprived of the pride and pleasure of creation which they cannot claim as their own. The aim and end of all production is consumption, and its main purpose is to secure maximum satisfaction for all. But a system of production which is directed mainly for augmenting the profit of the producer, a system of production which destroys the personality of man by reducing him to the position of a wage-slave can never enlist the sympathy and support of Gandhiji whose life was dedicated to the realisation of truth and non-violence in practical life.

Gandhism opposes the use of machinery in production on another ground. The use of machinery in production has led to the growth of production on a large-scale. The inevitable result of this system of production has been the concentration of economic power in the hands of the few who dominate the rest. Economic power tends to corrupt political power and the two together corrupt social life. Thus Gandhism advocates decentralisation of power in the economic as well as in the political system of a society. So Gandhiji advocated small-scale production in the economic system just as he advocated *Panchayet* form of administration in the political system.

Gandhism thus seeks to solve modern problems of life by ancient methods. It attempts to make a compromise between plain living and high thinking.

Gandhism aims at raising the moral standard of the individual and through the individual the moral standard

of society. With this end in view, he recommended certain principles to which a man's conduct should conform. These principles are truth, non-violence and scrupulous regard for means. These principles are usually called Gandhian technique by means of which one can convert an enemy into an ally. Gandhism emphatically asserts that in realising desirable ends, moral means must always be adopted. The Machiavelian maxim that the end justifies the means found no favour with Gandhiji who regarded means and ends as convertible terms. This is evident from the method which he chalked out in attaining Swaraj in India. To him, the means to win Swaraj was as sacrosanct as Swaraj itself. So he prescribed the method of truth and non-violence in winning Swaraj for the country.

Non-violence as a Gandhian technique in winning Swaraj took the form of *Satyagraha* which assumed different forms as the expression of mass action. The different forms in which non-violence or the Gandhian technique of *Satyagraha* manifested itself were *strike* both by businessmen and labourers, *picketing*, *civil disobedience*, *Hijrat*, *Fasting* and *Social boycott*. But in every phase of the application of the technique, it must be wholly non-violent because violence, according to him, is the very negation of truth.

Gandhism has not been accepted anywhere either as a creed or tried as a practical guide to the solution of social problems. Even in India, his own land of birth, Gandhism has not been accepted *in toto*. The adoption of the Gandhian system of production cannot possibly hold out any bright prospect in the matter of the economic progress of the country in the near future. The world might go a wrong way but India must keep pace with the progress of the world if she seriously mean to improve the lot of her people. She cannot possibly make the Ganges flow back to the Himalayas.

Again Gandhism emphasizes the importance of the development of the individual without the interference of the state but how far such development of individual personality is possible under existing conditions is a debatable point.



But the greatest defeat of Gandhism lies in our renouncing non-violence within the country. The same methods of coercion are being followed in dealing with unrest as in other countries. His views on the economic organisation of the society has also not been followed in India.

Hence it has been cynically declared that Gandhism is meant for export, not for internal consumption. It is utopian, and has only a poetic appeal. Even in India opinion is divided regarding its efficacy.

**Proper Sphere of the State.** A critical examination of the two theories reveals the truth that neither Individualism nor Socialism represents the correct view regarding state functions. None of them in its extreme form can, therefore, have any application in practical life. The state is neither a mere police-man nor a man of all work, neither a huge 'power-system' for the preservation of law and order only nor exclusively a 'welfare system' for the manufacture of unmixed comforts for all. "If there could be an ideal at once individualistic and socialistic, that would be the best theory about the functions of a state." The actual functions of a modern state are largely determined by the social and economic needs of different nations and as these vary from country to country, it is very difficult to draw a line of demarcation between legitimate and illegitimate state-functions. Thus in a backward country, the state may have to undertake many functions which may be safely left to the individuals in an advanced community.

The democratic states of the present day have undertaken various functions that are more or less socialistic in character. Though Socialism in its extreme form has nowhere been accepted except in the USSR, the nature and extent of the actual functions of modern democratic governments are marked by the gradual transition from the Individualistic to the Socialistic state. Thus almost all the modern states have undertaken the management of some of the big industries, such as railways, transport and other means of communication. The production of commodities such as gunpowder, opium, intoxicating liquors is often a state mono-

poly. The Legislatures of modern states are passing laws which are socialistic in character. Factory laws, tenancy laws, laws making provision for social services in the form of free primary education, old-age pension and unemployment and health insurance benefits are cases in point. The individualistic idea that the state should keep itself aloof from social, religious and purely private matters of its citizens has not found favour with modern states. The passing of the Child Marriage Restraint Act, popularly known as the *Sarda Act*, in India, is another example of the marked tendencies of the time, viz., the drift in the direction of Socialism. Though much condemned by the conservative section of the Indian people, this law succeeded in removing one of the gross social evils which were hostile to the national progress of the country. The question which naturally arises at this point is how far is the state justified in initiating social reforms? To this question, the individualists will at once give the reply that the state has no business in initiating social reforms which, it might safely leave in the hands of individuals who will take care of themselves. But modern states find it difficult to keep themselves aloof from these problems in view of the growing complexities of social life. Besides, as we have seen, the state has a function in relation to morality and that function is both positive and negative. But it should be remembered that the state can promote the moral sense of the people only by regulating their external conduct in so far as their external conduct is influenced by inward motive. The state should therefore pass such laws which are in accord with the best moral interests of the people or which remove the hindrances to the moral improvement of the people. Thus the state cannot directly make a man temperate even by imparting lessons on temperance but it can, by legislation, close down the liquor shops and remove the temptation to drinking. It is the duty of the state to secure the moral perfection of the community and to realise its end it must create and maintain those conditions in society in which the realisation of the moral ideal becomes possible. Thus laws introducing prohibition, restraining child marriage or making primary education compulsory are calculated to

remove the hindrances to good life and hence they can be justified on all grounds

Thus the modern state has made great inroads on the liberty of its citizen by prescribing for him even the minutest details of his life. In fact, the state follows a citizen from his birth to his death. The inroad is the greatest in the economic field where the government of every country is gradually extending its activities. States on a socialistic or fascist basis have already extended their long arm over the economic aspect of human life. Even in states like Great Britain and the U.S.A., state control over the means and methods of production and on the machinery of distribution is gradually on the increase. This increasing control of the state over every aspect of the citizen's life specially over the economic aspect stands in strange contrast to the individualistic view which did not permit the state to go beyond the limits of essential functions, namely, the preservation of law and order. Do all these imply a serious curbing of individual liberty and if so, is it not necessary to restrain the state to safeguard liberty?

The truth is that modern democratic states rest on the consent and co-operation of the people. The state is no longer considered as a power-system only, it is a welfare-system too. Thus it is aptly said that "the conception of the police-state has given place to that of the culture-state" and the state should therefore be guided by considerations of the greatest good of the greatest number. It cannot possibly limit itself only to the negative or police-functions. Besides these negative functions the modern states have undertaken a large number of positive functions which are calculated to promote the well-being of the entire body of its citizens without unduly restricting their liberty. "The work of a modern state runs to the roots of life, liberty property and pursuit of happiness"

### **What the State should not do.**

An examination of the nature and extent of the functions which modern states usually perform is likely to create the

impression that the state is a man of all work having no limits to its functions. But such an idea is essentially erroneous inasmuch as it is fatal to the development of individual personality, the promotion of which is considered to be the primary function of the state. It is the duty of the state to create that atmosphere in society in which the individual gets the fullest opportunity for self-expression and self-development. Any action of the state which impedes or in any way affects the development of individual personality should be considered as illegitimate action on the part of the state. The state therefore should not try to regulate any opinion held by the people so long as this opinion is expressed in peaceful and constitutional method. A law may be denounced as unjust and injurious by a section of the people but so long as they confine their campaign against that particular law to peaceful persuasion of others, the state should not seek to control that opinion, no matter what that opinion may be. To suppress opinion is to suppress personality and suppression of personality defeats the very end of the state.

Secondly, the state should not also try to interfere with the customs and habits of the people which grow independently of the state and which have their sanctions in time-honoured popular beliefs. But this is not always tenable. True it is that the state cannot create custom but it is imperative on the part of the state to modify or alter or even to abrogate those social customs which impede social progress. The abolition of the *Suttee* and enactment of the *Child Marriage Restraint Act* in India illustrate the desirability of state interference in regulating social customs.

Thirdly, popular tastes and fashions should also be left free to grow. The state should not ordinarily prescribe the dress or the normal diet of the people. Prime Minister Nehru may have a fascination for a particular kind of coat but this should not certainly be made compulsory. Fashion changes quickly and people find zest in accommodating themselves with the change of fashion spontaneously.

Lastly, the state is an organisation which can regulate only the external conduct of men and as such it should never

seek to interfere with religion and morality which are subjective and hence should not be dictated by the state

**Classification of State functions.** We have already seen that the functions performed by the state are not the same everywhere. But there are certain functions which every state must perform to ensure its existence. These functions are variously known as *Fundamental*, *Primary* or *Essential* functions. The other functions are termed as *Optional*, *Ministrant* or *Non-Essential* functions because the performance of these is neither necessary for the existence of the state nor essential to the liberty and security of its citizens, but they are considered as means to promote the material, moral and intellectual welfare of its citizens. The functions, essential and non-essential, may briefly be stated as follows —

**Essential functions.** (i) The preservation of internal peace, order and security. (ii) The fixing of the legal relation of the family, (iii) The determination of contractual rights between individuals, (iv) The regulation of the holdings transmission and interchange of property, (v) The administration of justice in civil and criminal cases. (vi) The determination of political duties, privileges, and relation of citizens. (vii) The regulation of foreign relations and (viii) The preservation of the state from external danger and the advancement of its international interest.

**Non-Essential Functions.** They include a large number of functions which may be summarised as follows —

(i) *State management of industries* which are undertaken for securing revenues as well as for social purposes. Thus salt, tobacco, currency, etc., are state monopolies.

(ii) *The regulation of trade and industry*. These include the regulation of railways, bank, joint-stock companies, determination of fiscal policies, navigation laws, etc.

(iii) *The regulation of labour*. This relates to the enactment of factory laws and mining laws affecting the interests of all classes of labour, especially women and children.

(iv) *The maintenance of the Post and Telegraph system*.

(v) *Sanitation and Health*. These include those measures taken for the prevention of diseases and for ensuring the supply of good food to the people.

(vi) *Care of the poor and the incapable* Every state considers it to be its duty to take care of the poor and the infirm by providing for free schools, asylums and hospitals

(vii) *Education* Ignorance and illiteracy are the greatest hindrances to good citizenship. A state which seeks to promote the welfare of its citizens must do everything for removing these hindrances. This may be done by the state either directly undertaking the function or by supplementing the activities of private organisations by giving them subsidies. The maintenance of libraries, museums, research institutes and other cultural associations constitutes an important function of modern states.

## SUMMARY

*The Ends of the State and Functions of Government* The Greeks and the Romans regarded the state as an end in itself. But the old idea has been replaced by a new and bolder one, viz., the state is but a means for promoting human welfare.

*The True Ends of the State* Different writers have set forth different ideals for the state. Thus Bluntschli points out that General welfare is the true end of the state. The Utilitarian school regards 'Utility', i.e., greatest good of the greatest number as the true end of the state. But all these do not point to anything definite, they are rather vague. The views of eminent modern writers like Burgess, Garner and others are that the ends of the state are three-fold—primary, secondary and ultimate, i.e., good of the individual, good of the nation, and ultimately good of the humanity at large.

*Theories of State functions* *Anarchism* The Anarchists regard the state as an unnecessary evil and want to abolish it altogether. Anarchism has an exaggerated faith in the capacity of individuals to look after their own interests.

*Individualism* The Individualists regard the state as a necessary evil and so advocate a drastic curtailment of the functions of the state which should be restricted only to the preservation of law and order and no more. Individualism is based on the following grounds,—ground of natural justice, scientific ground, economic ground, empirical ground and ground of state incompetency. Individualism lays too much stress on the liberty of the individual but overlooks the value of well-directed state-regulations.

*Socialism* The Socialists hold that the state is a positive good and that the interests of the individuals can be best promoted by maximising the control of the state.

*Forms of Socialism* There are different forms of Socialism of which the oldest one is *Utopian Socialism*. The modern theory of Socialism is based on the writings of Karl Marx. Different schools of Socialism grew out of the doctrine of Karl Marx. These are known as Collectivism, State-socialism, Fabian socialism, Syndicalism, Guild-socialism, Christian socialism, Communism. Fascism and Nazism are two political creeds which flourished in Italy and Germany respectively as a protest against the injustice and incompetence of the then existing governments of the two countries. Both Fascism and Nazism defy the state and exalt the Nation above all individual interests. Fascism and Nazism are opposed to all that is democratic and liberal.

Socialism has done a distinct service by rightly pointing out the defects of Capitalism but it unduly exaggerates the capacity of the state.

*Proper sphere of the state* The actual functions of a modern government are determined largely by the circumstances and needs of the time. The modern tendency of civilised states is to undertake a variety of functions which are considered necessary for the promotion of the material, moral and intellectual welfare of its citizens.

*What the State should not do* Although the modern state is considered as a great social service organisation having practically no limits to its functions, yet in the interest of the development of individual personality, the state should not seek (i) to regulate opinion, (ii) to interfere with customs and habits of the people, (iii) to impose new fashions and tastes on the people and also (iv) to dictate religion and morality.

*Classification of the State Functions* The functions of a government may be classified into essential or constituent and non-essential or ministrant.

## QUESTIONS

1. Examine some of the essential and non-essential functions of Government with special reference to the Government of India. Why are they called essential and non-essential?

(C U. 1946)

2. What in your opinion is the proper sphere of the state? Do you justify what is popularly known in India as the Sarda Act? Give reasons for your answer.

(C U 1932)

3. Classify state functions. What are the Individualistic and Socialistic theories of state functions? Why is it said that neither Individualism nor Socialism represents the modern view of the functions of the state?

(C U Hon 1928)

4 Where would you put a limit to the proper sphere of the state? Do you justify the policy of Prohibition in India? Give reasons for your answer. (C U 1949 Sup)

5 Can any limit be put to the proper sphere of the state in modern times? Give reasons for your answer (C U 1950)

6 Discuss the various theories of the end and purpose of the state (C U 1952.)

8 Discuss the value and limitation of Individualism as a social and political theory (C U Hon 1955)

9 Discuss the proper sphere of the State (C U 1955)

10 Where would you put a limit to the sphere of the State?

Should the state prohibit the sale and consumption of alcoholic liquor? [Gauhati (Hon) 1949 ]]

11 What should be the positive functions of a modern state? To what extent should the state leave religion alone? (C U Hon 1958)

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## CHAPTER XIX

# LOCAL AND COLONIAL GOVERNMENTS

### *References*

- W Anderson (Ed)—Local Government in Europe  
J A Williamson—A Short History of British Expansion

**Local Government.** The institutions of local government play a prominent part in almost all democratically governed countries. In fact, democratic governments can succeed only on the basis of local self-government. The vastness of a modern state and the growing complexities of its manifold activities have made it impossible for a single governmental organisation to deal efficiently with all its problems. Hence arises the necessity of creating smaller units of administration such as counties, boroughs, departments, districts, etc. The smaller units of administration are called local governments because they imply the management of local affairs generally by the representatives of the local people.

**Principle of Organisation.** Leacock says that the distinction between local and Central governments lies partly in their relative constitutional positions, and partly in the nature of public services performed. The units of local governments are usually created by Central government and are subordinate to it in all respects. They derive their powers from the Central government which can withdraw the same at its pleasure. The system prevails in countries having a Unitary form of government as in England and France. For purposes of local government, the whole of England has been divided into a number of counties and county-boroughs. The counties have been further divided into urban districts and rural districts. The districts in their turn have been sub-divided into Parishes and a cluster of Parishes comprises the Poor Law Unions. Each of these units is governed by an elected council consisting of a chairman, aldermen and councillors and a permanent staff to assist the council.

Similarly the whole of France has been divided into a number of departments. The executive authority of a depart-

ment is vested in a Prefect who is appointed by the Central government and is assisted in his work by an elected body, known as the General Council. The departments have been sub-divided into a number of Arrondissements with a Sub-prefect at the head of each. The Sub-prefect is an agent of the Prefect and is also aided by an elected council of the Arrondissement. The Arrondissements have been mapped off into a large number of Communes which form the basis of the pyramid of the French system of local government.

The constitution of local bodies is governed by two different principles, viz., principle of centralisation and principle of decentralisation. The administration of France is highly centralised. The units of local government—the department, the arrondissement and the communes are not autonomous in any respect but are only administrative divisions and sub-divisions of the Central government. They have no inherent powers. The local bodies are to carry out the will of the Central government which exercises a rigid control over local affairs through its agents, the Prefect, the Sub-prefect and the Mayor. Munro says, "The minister of the interior at Paris presses a button—the Prefects, Sub-prefects, and Mayors do the rest. All the wires run to Paris." The system possesses the advantage of uniformity in local administration and is thus helpful to the enforcement of uniformity in all directions. But the system is undemocratic inasmuch as it does not allow the growth of Home Rule in local administrations.

The policy of 'let alone,' or Municipal Home Rule has been generally followed in the United States. The Central government in the USA has no control over local bodies which derive their powers from the Constitution of the states. The English system of local government stands midway between the extreme centralisation of France and the rigid decentralisation of the USA. For a long time in the past the units of local governments in England did about as they pleased, with almost no control from the Central government. But in recent years, the control of the Central government is steadily growing although by no means so much as in France. The English system is marked by a considerable amount of legislative centralisation with administrative decentralisation.

The local bodies are subject to the control of Parliament in regard to legislation but they enjoy autonomy in the management of local affairs which are administered chiefly by elective bodies like the County council or Parish council. There is no agent of the Central government like the Prefect in France to control and guide the local bodies. The Central government, however, supervises the work of the local bodies through six of its great departments, namely, the Home Office, the Ministry of Transport, the Ministry of Health, the Board of Education, the Board of Trade and the Electricity Commissioners.

The decentralised system possesses the merit of relieving the Central government of the responsibility in local affairs. Local affairs are managed in a better way by the local people than by the people at a remote centre. Besides, the system has a great educative value inasmuch as it serves as the best school for training the people in the art of self-government.

**Functions of Local Government.** The functions of local government may be broadly classified under four heads, namely, public health, public safety, public convenience and public education mainly primary education. These functions relate to the construction and maintenance of roads, bridges, parks, schools, museums, hospitals, asylums, etc. The management of public utilities like the supply of water, electricity and gas, the prevention of disease, protection against fire and disorder and the provision for transportation system—all these fall under the jurisdiction of local bodies which also share with the Central government the right to levy local rates necessary for discharging their duties.

**Merits of Local Government.** The great merit of local government is that the system increases the efficiency of government as a whole by relieving the Central government of the burden of work which is distributed between the two governments. *Secondly*, local affairs which affect the local people most are managed in a better way by the local people than by the people at a remote centre. *Thirdly*, administrative decentralisation transfers responsibility of work from the centre to the local bodies, thus enabling the local people to participate

in their local affairs. A share in the management of local affairs thus increases the civic sense of the people and serves as an important agency for the training of the people in the art of self-government. *Fourthly*, the system secures economy by decentralising financial responsibility. The funds necessary for promoting local interests are raised by local bodies through local taxation or rating. The rate-payers therefore exercise great control over the affairs of local bodies through their right to elect representatives to the local bodies. Thus the ideal of a democratic government, viz., government of the people, for the people and by the people, can be realised only through the institutions of local government.

But it must not be forgotten that local governments should be organised in such a way that the unity of the government as a whole is not impaired in any way. Local independence and central control should be so combined as to increase the efficiency of the government as a whole. This consideration has prompted some states to adopt a policy of legislative centralisation with administrative decentralisation while other states have adopted legislative decentralisation with administrative centralisation. The first method has been adopted in England where, for the sake of uniformity, the British Parliament enacts laws for the whole country and the local bodies are to administer them and, if necessary, to supplement them by making bye-laws. In France, on the other hand, local bodies have been given powers to make local laws but these laws are administered by the Central government through its own officers, namely, the Prefect and the Sub-prefect.

**Colonial Governments.** History abounds in examples of attempts at colonisation made by powerful nations in the past. The Phoenicians, the Greeks, the Romans and the ancient Hindus established many colonies far and near their home lands. During the middle Ages, the Portuguese and the Spaniards played a prominent part in colonisation. The administration of colonies by Spain was marked by extreme repression and ruthless exploitation of the colonial people and this brought into the field two rival powers, viz., England and France which ultimately ousted both Spain and Portugal as

colonial powers. The motive behind the foundation of colonies has not been the same everywhere. Economic and political motives have everywhere influenced greatly in the matter of colonisation, but religious motives in the form of missionary activities and the spirit of adventure have also contributed, in no small measure, to the growth of colonies and dependencies. Colonial expansion may be due either to individual initiative or to the initiative taken by the state. There are different types of Colonial Governments.—

(a) **Self-governing Dominions** like Canada, Australia, etc. (See Ch II)

(b) **Representative Colonies** These are territories where the Government is representative in character but the Executive is not responsible to the Legislature. The mother country nominates the Executive and retains full control over colonial affairs. Ceylon, Jamaica, etc. were formerly under this class.

(c) **Crown Colonies.** These are directly administered by the Crown with the help of governors and administrators appointed by the Crown. There is no elected Legislature in Crown colonies and if there be any, it consists entirely of nominated members. Fiji, Strait Settlements, Honduras are examples of Crown colonies.

(d) **Protectorates**—See Ch X.

(e) **Spheres of Influence.** These come into existence when a foreign state acquires special privileges in trade and commerce in another state. It is a method of peaceful penetration adopted by powerful states with the ultimate object of converting it into a Protectorate. Spheres of influence are, however, not recognised by other states. England, America, Russia and Japan created Spheres of Influence in China.

## SUMMARY

**Local Governments** Local governments are institutions for administration of small areas by the local people. They may be either centralised or decentralised. There is a rigid control of the Central government over local affairs in the centralised system. The local governments enjoy autonomy under the decentralised system. The English system stands midway between the two. Local governments are useful because they

are better able to meet the special needs of the locality than a government at a remote centre. They have also an educative value

*Colonial Governments* Colonies existed in the past and they exist even now-a-days in various forms, viz , Self-governing dominions, Representative colonies, Crown colonies, Protectorates, Spheres of Influence

### QUESTIONS

1 Which of the two types of local government better suits the purpose of India and why?

2 Write notes on (a) Crown colonies, (b) Protectorates, and (c) Spheres of Influence

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# PART II

## CHAPTER I

### GOVERNMENT OF GREAT BRITAIN

#### *References .*

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W. B. Munro—The Governments of Europe. Chs 1, 3—7, 9, 10, 12 and 14.  
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**Introduction.** The study of modern governments should begin with the British constitution in view of the fact that the art of representative government is a distinct contribution made by the Anglo-Norman races to the advancement of civilisation. The British Constitution is not only the oldest among the existing constitutions of the world which has profoundly influenced the character and contents of other constitutions but the process of political evolution in Great Britain has also been one of almost unbroken continuity and relatively free from civil disturbances. In other countries, the history of constitutional development is mainly a history of breaks or of new establishments, while in Great Britain, it has been one of gradual modification and of almost unconscious development. The smooth growth of free institutions in this country is mainly due to *three* factors. The geographical isolation of Great Britain from the main land of the European continent has enabled her to develop her political system in her own way free from any outside influence. *Secondly*, the love for free institutions is an inborn characteristic of the British people who represent a fusion of three different racial stocks—Celt, Saxon and Norman. *Lastly*, the racial genius of the people has never allowed the free growth of their



political institutions to be impeded by a rigid constitution. The constitution is therefore marked by a singular continuity from the very beginning to its present form and has come to be a model to imitate.

**Nature of the British Constitution.** The key to an understanding of the true nature of the British constitution lies in the fact that the British constitution has not been made but it has evolved and has been evolving over a period of many centuries. The British constitution is truly a living thing which is ever growing in the light of changes that are taking place in national life as well as in international relations. It is embodied not in one single document or series of documents. It has not even been created at any particular period of history. Out of a grossly imperfect beginning from the Anglo-Saxon period and making its way through numerous changes according to the needs and circumstances of the age, it has come to be what it is today. It is not a completed thing but ever in a state of flux. It is to be gathered not from one source but from various sources. Though largely based on conventions, precedents and understandings, it is not free from the influences of legislative enactments, executive decrees and judicial decisions. There is therefore no wonder that the American and the French writers will deny the existence of a British constitution.

The word *Constitution* is sometimes used in a narrow sense to mean only written constitutions. When De Tocqueville, the celebrated French writer, declared that England did not possess any constitution, he meant by constitution only a mass of written laws, embodied either in a single document as in the USA or in a series of documents as in his own country. But this is not the only sense in which the word *Constitution* is used in political science. In the broad sense, the "Constitution means all those rules, principles and conventions, *written* or *unwritten* which govern the organisation and functions of a state". In this sense, all states possess a constitution. No constitution is wholly written or wholly unwritten. The USA or the French constitution is mainly written while that of Britain mainly unwritten. But nevertheless, unwritten constitutions contain written elements and

written constitutions contain unwritten elements. The difference between written and unwritten constitutions is rather one of form and not of substance. The failure to recognise the existence of the British constitution is therefore due to the undue importance which these writers attached to the written character of the constitution. The British constitution, quite unlike that of the U.S.A. or of France, is not a tangible thing rather an idea which exists in the minds of the people who are working it out.

It is necessary to distinguish between the two different senses in which the concept of *unconstitutionality* is used in England and in the U.S.A. In England, no court of law is competent to declare a law passed by the King-in-Parliament as unconstitutional because the King-in-Parliament is a sovereign law-making body. A law may be regarded as unconstitutional in the sense that it is a departure from the existing tradition of the British Government. If, suppose, Parliament enacts a law providing for the trial of civilians by court martial in time of peace, public opinion in England will certainly denounce it as unconstitutional but cannot call upon a court to nullify it as *ultra vires*. But in the U.S.A., both the executive and the legislature derive their powers from the constitution which is the supreme law of the land. An act of the Congress or of the President may be declared unconstitutional by the Federal Courts, if it is at variance with any provision of the constitution. Acts declared *ultra vires* by the courts will become inoperative. Hence in the U.S.A., an unconstitutional act is *ipso facto* an illegal act, but in England it is absolutely legal though it may be unjust or untraditional.

**Source or Elements.** The elements of the British constitution, according to Dicey, may be classified under *two* distinct heads—‘The law of the constitution’ and ‘the conventions of the constitution’. The former includes a body of legal rules which are enforceable in courts of law while the latter are not laws at all and cannot therefore be enforced by any court. The law of the constitution is made up of the following *four elements*

(a) *Certain charters and constitutional landmarks*. These comprise the Magna Carta (1215), the Petition of Right (1628),

the Bill of Rights (1689), the Act of Settlement (1701), the Act of Union with Scotland (1707) and with Ireland (1800). These form only a fraction of the whole

(b) *Statutes* There is a large number of ordinary statutes passed by Parliament from time to time. They relate to methods of election, and governmental powers or procedure, as for example, the Habeas Corpus Act of 1679, the Reforms Act of 1832, 1867 and 1888 and the Representation of the People Act of 1918.

(c) *Judicial decisions* The third element of the British constitution is to be found in the judicial decisions which have nourished the constitution by interpreting charters and statutes and also by explaining their scope and limitations. Some of the important constitutional rights are the outcome of judicial decisions.

(d) *Common Law* This refers to that body of legal rules which grew up in England apart from Parliamentary enactments. The right to a jury trial in criminal cases is an example of Common law. The Common law, like all other laws, are continually in the process of development by judicial decisions and are enforced by courts of law.

**Conventions of the Constitution.** These consist of the unwritten rules of political ethics, as sacrosanct as law but not enforceable by the law courts. "They include various political customs or usages which regulate ordinary conduct of the Crown, of the ministers, and of public authorities under the constitution." These conventions are generally grouped under three heads. (a) The *first* group of conventions relates to the system of the Cabinet. In fact, the whole cabinet system, its responsibility to the Legislature, the position of the Prime Minister, etc. are governed by conventions. (b) The *second* group of conventions relates to Parliament and includes such important rules, as the collective responsibility of the Cabinet to Parliament as a body, a ministry outvoted in the House of Commons must resign or appeal to the Electorate or Parliament must be summoned once a year. (c) The *third* group of conventions regulates the relation between Great Britain and the Dominions. As a matter of fact, Dominion Status,

as it is enjoyed by the Dominions, is the outcome of a series of agreements entered into by the representatives of the mother country and the Dominions and as such a product of conventions, some of which have been codified into law by the passing of the *Statute of Westminster* 1931

**Sanction behind the Conventions.** The question then arises why these conventions are scrupulously obeyed in the absence of any legal force. These conventions are not laws, nevertheless they have the force of laws and are always acted upon. Two sanctions have been suggested; (a) The fear of impeachment and (b) the force of public opinion. The rule of impeachment has fallen into disuse and is not likely to be revived. Dicey is of opinion that conventions are observed because a violation of any of them will almost immediately bring the offender into conflict with the courts and the law of the land. For example, if Parliament be not summoned once a year, the Annual Budget will not be voted and the whole administration will collapse. If the Executive sanctions expenditure for current expenditure without the approval of Parliament, its illegality can be proved in courts of law and the supply can be stopped. Thus, according to Dicey, Conventions cannot be violated without colliding with statutes or coming in conflict with public opinion. Conventions are obeyed not for any apprehension of violation of law—for law itself can be changed—but out of respect for public opinion. These conventions are in facts so many codes of honour, the breach of which is likely to create so many complications in the working of the governmental machinery that no government would willingly violate them. The real sanction behind the conventions is therefore the force of public opinion which no statesman with foresight can afford to disregard.

The very fact that conventions are obeyed prove their utility to the nation in many ways. They are useful, *firstly*, because they have lent elasticity to the constitution without which the constitution would have been almost unworkable. Thus the convention that Royal Veto should no longer be exercised upon legislation has made monarchy quite compatible with democracy. Monarchy need not be abolished to

satisfy the age of democracy *Secondly*, they have enabled the electorate, the ultimate political sovereign, to determine as to who shall govern. The convention that the King can dissolve the House of Commons is a democratic device adopted to ascertain the will of the people who elect the legislature. *Thirdly*, some of them have secured that co-operation between the executive and the legislature without which the smooth working of the parliamentary system would have been impossible in Britain. *Lastly*, they have also helped to bring the self-governing Dominions into closer relations with the mother country without impairing their autonomous status.

### Characteristics of the British Constitution.

(1) The main characteristic of the British Constitution is that it is *unitary*, *unwritten* and *flexible in character*. It is unitary because there is one central authority and the sole authority to make laws for the whole of Great Britain is vested in Parliament at Westminster. The constitution is mainly unwritten, though there are certain written portions like the Parliament Act of 1911, the Representation of People Act, 1918, etc. But the bulk of the fundamental laws rest on customs, usages, common law and conventions which are as binding as the written laws. The constitution is also an example of extreme flexibility inasmuch as constitutional changes can be effected as easily and in exactly the same manner as ordinary laws. The British Parliament is both a law-making and a constituent authority.

(2) *Sovereignty of Parliament* is another leading characteristic of the British constitution. Legally speaking, Parliament is supreme and it knows no limitations to its power. The sovereignty of Parliament has *two* aspects—positive and negative. In its positive aspect, it implies that Parliament can pass, amend or rescind any law of the land, and negatively, it means that there is no other authority above Parliament which can override its decisions. It should be noted here that Parliament means King-in-Parliament including the Crown, the House of Lords and the House of Commons. But in spite of its legal omnipotence, there are two limitations to its sovereign power. The first limitation is an external one which consists

in the fear of public disapprobation of its laws. The second limitation arises from the very nature of the sovereign power itself—its composition, character, etc. To these may be added a third one, namely, the present Parliament cannot bind any future Parliament.

(3) *Uneality* is another characteristic of the British constitution. It means that there are great differences between theory and practice, i.e., between the actual terms of the constitution and the actual practices. In other countries, there is at least a rough correspondence between constitutional provisions and the actualities of government but in England, “nothing is what it seems, or seems what it is.” The theory is that the Crown is the source of all authority the ministers are appointed and dismissed at Royal pleasure, but in practice, the powers are exercised by the ministers. Similarly, in theory, the King-in-Parliament is the supreme legislative authority but in practice the House of Commons exercises virtual control over legislation.

(4) *Fourthly*, the British constitution is characterised by *unbroken continuity*, the link between the past and the present never being wholly severed. The constitution is the result of gradual growth and has reached its present stage by gradual process of development.

(5) Another unique feature of the British constitution is *the rule of law* which implies three things. *Firstly*, it means legality of law. No man can be detained or punished except for a distinct breach of law which must be proved before a legally constituted court. *Secondly*, it means impartiality of law. All persons, irrespective of their rank or social status, are subject to the ordinary law of the land and amenable to the jurisdiction of the ordinary courts of law. Law is thus no respecter of person. *Thirdly*, it means that the general principles of the constitution are the result of judicial decisions determining the rights of private persons in particular cases brought before the courts.

In England, there is no *droit administratif* of the continental type according to which public officials are tried by separate courts known as administrative courts set up for the

tual of officials for offences committed in their official capacity. But in England, law is no respecter of person. Everyone,—from the Prime Minister down to the Police constable in the street, will have to answer for illegal act as any other citizen. The principle of legal equality of all citizens is so deep-rooted in England that barring the King who 'can do no wrong', all others including even the king's ministers have to shoulder the responsibility for every act done without legal justification and for which they are amenable to the ordinary law of the land. In England, the rights of citizens are not protected by the provision of a written constitution nevertheless English men are as free as the Americans or the French in their own lands. Thus 'Rule of Law' ensures to Englishmen the enjoyment of their civil liberty by limiting the authority of the executive who cannot easily encroach upon the liberty of the people in any manner. But it should be noted here that this admirable analysis of the Rule of Law by Dicey is subject to so many exceptions that it cannot be accepted *in toto*. True it is that in England there is no *Droit Administratif* of the continental countries but there are laws like the Public Authorities Protection Act of 1893 and similar other provisions which give special protection to officials and thus limit the applicability of the Rule of Law. Thus when an official has done any wrong to a private citizen in the discharge of his official duty, the official will no doubt be hauled up before an ordinary court. But if the official is found guilty and is fined or asked to pay damages to the private citizen, it is the state and not the guilty official who is to pay such damages. This and similar other provisions have considerably weakened the check of 'Rule of Law' on the arbitrariness of persons in authority. The system of delegated and subordinate legislation has also strengthened the hands of the executive.

(6) Another important feature of the constitution is that the government is typically *parliamentary* in form. Although the king is the legal sovereign, the actual work of administration is run by the ministry who belong to the majority party in Parliament and they continue in office so long as they command the confidence of the legislature. Thus in Great

Britain there is no separation of powers between the executive and the legislature, the executive being an integral part of the legislature

**The Executive.** The Executive in England consists of *three* parts, viz., the Crown, the Cabinet and the Civil Service. The Crown is the nominal or the formal executive, the Crown and the Cabinet together constitute the political executive. the Cabinet is the real executive and the Civil Service is the permanent executive as its tenure of office is permanent

**The King and the Crown.** In the British constitution, a distinction has been made between the King as a person and the Crown as an institution. The King is an individual in his personal capacity while the Crown is an impersonal body—a legal idea which has been very aptly described by Sir Sydney Low as ‘a convenient working hypothesis’. The distinction has been more effectively expressed by the saying, “The King is dead, Long live the King.” It means that the King as a person may die but the Crown which represents a bundle of sovereign powers and prerogatives survives. The powers and functions of the Crown belong not to a person but to an office which, when vacated by one, is assumed by another. The King is only the physical representative of the Crown and on the demise of the King, the crown passes on to his successor. Thus Blackstone has rightly remarked “Henry, Edward and George may die but the King survives.” *The king never dies*

**The King can do no wrong.** This is an important maxim of the British constitution. It means *firstly* that the King cannot personally be held responsible for any act done by him and cannot be prosecuted in any court. But if the King is above law, there must be somebody to account for an illegal act done in the name of the king. The Rule of Law in England will not permit any wrong-doer going unpunished. Hence as the King can do no wrong, somebody must be legally responsible for the acts of the Crown. The outcome of this maxim is the principle of ministerial responsibility which requires that an act of the Crown must be countersigned by a minister who is responsible for the consequences of the act. *Secondly*, the maxim means that as the King can do no wrong,



he cannot also authorise any wrong. No one can plead the authority of the King in justification of any wrongful act done by him. No body can shield himself behind the legal immunity of the King.

**Position and Powers of the Crown.** The supreme executive authority of the state is vested in the Crown which is a hereditary institution. Succession to the throne is regulated by the law of primogeniture, elder sons being always preferred to younger, and male heirs to females. The Statute of Westminster, 1931, provides that "any alteration in the law touching the succession to the throne or the royal style and titles" requires the assent of the Parliaments of all the Dominions as well as that of the Parliament of the United Kingdom. The Act of Settlement which governs the succession provides that the King must not only be a Protestant but also forbids his marriage with a Catholic. The King is to take a coronation oath which requires him to remain faithful to protestantism and to promote its cause. To meet his personal and other expenses, the King is paid an annual allowance, i.e., the civil list out of public funds.

The powers of the Crown are derived from *two* main sources—Royal Prerogatives and Parliamentary Statutes. Prerogatives may best be defined in the words of Dicey as "the residue of discretionary powers left at any moment in the hands of the Crown." Many of these prerogatives—King's original authority—have either fallen into disuse or have been given up by the Crown on agreements between itself and the people. The abolition of the prerogative courts, the non-exercise of the veto power on legislation are examples of such prerogatives. Of the existing prerogatives of the Crown, mention may be made of his immunity from all political responsibilities as illustrated in the maxim—the King can do no wrong. Statutory powers of the Crown embrace those powers conferred by Acts of Parliament from time to time. Thus every new Act of Parliament that prescribes new duties for the executive authorities adds so much to the powers and functions of the Crown. The powers of the Crown are not therefore fixed but are in a state of flux and are continually in-

creasing Broadly, these powers are executive, legislative, judicial and miscellaneous

(1) *Executive and administrative powers* The Crown is the supreme head of the Executive. He appoints all the important officers of the state including the Prime Minister and other cabinet members. With few exceptions, he possesses the powers to suspend and dismiss the officers. He is the head of the army, navy and air forces. He can declare war and make peace but the money needed must be voted by Parliament. All foreign affairs are conducted by him. He can even conclude treaties without consulting Parliament provided they do not involve the imposition of a tax or a cession of territory.

(2) *Legislative powers* All laws are passed by the King-in-Parliament. No bill will become an act unless it receives the royal assent which will come as a matter of course. The royal veto on legislation has become obsolete. It has never been exercised since the time of Queen Anne, 1707. The Crown also possesses the sole power to summon, prorogue and dissolve the House of Commons. But Parliament, however, must be summoned once a year.

(3) *Judicial powers* The Crown is the fountain of justice which implies that the Crown is the distributor of justice. But the Crown does not possess any right either to alter the existing judicial organisation or to change the manner of distribution of justice. All appeals from overseas colonies and dominions lie to the King and they are heard by the Judicial Committee of the Privy Council. The Crown enjoys the prerogative of mercy.

(4) *Miscellaneous powers* The Crown is the head of the Established Church of England and appoints the Archbishops, Bishops and other ecclesiastical dignitaries. It is the custodian of public morality. The Crown is also the source of all honour. It confers peerage and grants all titles and honours on the recommendation of the Prime Minister.

The above list of powers are formal legal powers of the Crown. But it should be noted that they are not exercised by the King but by his ministers who are answerable to Parliament. The Cabinet exercises these powers in the name of the Crown.

**Why does kingship survive in England?** The reason why kingship survives at all in an age when monarchies in other countries are fast collapsing is not far to seek. The abolition of monarchy will certainly give a reality to the government and will involve the saving of the civil list which will relieve the burden on the taxpayer. But in spite of these, the institution of monarchy has been retained because of the manifold advantages derived from it. The monarch is not a 'magnificent cipher' as is generally supposed.

It has been said that "one of the most remarkable phenomena of modern political development has been the security of the British kingship." The King has lost all his personal powers but the Crown as an institution has gained immense powers and its security has been fully established in the constitution. The powers and prerogatives of the King have now become the privileges of the people. Thus, in England, kingship is not incompatible with democratic government. Kingship has now become as popular an institution as Parliament itself. *Secondly*, the survival of monarchy may be partly attributed to the innate conservative temperament of the English people who are averse to part with one of their oldest institutions. Besides, the idea of divinity which surrounds the person of the King has lent a moral support to the government. There is a halo round the British king which has strengthened the government by capturing the popular imagination readily. An elected president cannot inspire the same amount of awe and reverence in the minds of the people as the hereditary monarch does in Great Britain. *Thirdly*, kingship has been retained because there is no other alternative to it. A really powerful executive like that of the USA will not suit England, for that will destroy the supremacy of Parliament. A president of the French type who neither reigns nor governs will not improve matters. *Fourthly*, kingship has been retained because it renders tangible services to the state. In England, the importance of the advisory functions of the King can hardly be minimised. He still possesses *three* important rights—the right to be consulted, the right to encourage, the right to warn. Ministers may come and go, parties may rise and fall but the King has the

special advantage of a long political experience. He is above all party-politics and as an impartial and a disinterested umpire, he alone is in a position to give sound advice to his ministers. Instances are not rare in British history when kings have rendered valuable services to the nation by giving proper encouragement and timely warning to their ministers. Although the King has been stripped of almost all his powers, he wields enormous influence over the affairs of the state by reason of his unique position, varied experience and impartial views. The King also plays the role of a mediator—a peace-maker between warring political parties. In the interval between the resignation of a ministry and the formation of a new one, the King becomes the repository of all executive powers. Lastly, the King is the symbol of imperial unity. He is the visible symbol which has linked together the different parts of the empire. The abolition of monarchy will therefore mean the dissolution of the Commonwealth. During and after the First World War, some criticism was directed against monarchy and a feeble sentiment in favour of a Republic grew in England. But the experiment of republicanism in many countries on the continent made kingship in Britain stronger than before. The attitude of the Labour Government of England as expressed on the floor of the House on many occasions was not definitely republican. The institution of monarchy has therefore no immediate danger. Our conclusion then is that “It must not be supposed that in the arena of politics, the King Emperor’s part is purely that of a mouth-piece”

### **The Privy Council**

The Privy Council is the legal machinery through which the powers of the Crown are exercised. The Council is the direct descendant of the *Curia Regis* which was a part of the Norman Great Council. During the reign of the first two Stuart Kings, the Privy Council became very powerful and began to represent the King in all fields of administration. It was also the Supreme Court. In course of time, the Council became too large to serve its purpose and an inner Council—Cabinet—grew out of it and assumed almost all powers of the

parent body Since the Cabinet has attained its present constitutional status, the Privy Council has ceased to be an advisory body of the King It is now only a formal body without any important functions of its own.

The members of the Privy Council are nominated by the King and hold office during lifetime They can be removed from their posts by the King The Privy Council, as it stands to-day, consists of about 330 members including archbishops of Canterbury and York the bishop of London, the nine Lords of appeal in ordinary, various other high judicial personages, ambassadors to foreign countries, the Speaker of the House of Commons, etc A few representatives of the dominions and persons of eminence in the fields of arts, science and literature are also made Privy Councillors at the option of the Crown But the bulk of the Councillors are drawn from the rank of the present and past cabinet members The Councillors are known as "The Right Honorable" and rank next in dignity to the Peers The meetings of the Council are not, however, frequently held to transact formal business and the presence of three members usually Cabinet members, including the Lord President of the Council, forms the quorum The Privy Council now-a-days performs its functions through certain committees, the most important of these committees being the Judicial Committee of the Privy Council, which is the highest court of appeal from ecclesiastical courts and courts of the colonies and dependencies Other committees which originated from the Privy Council are the Board of Education, the Board of Trade and the Board of Agriculture It should, however, be noted here that the Council no longer acts either as a deliberative or as an advisory body This function has passed on to the Cabinet The functions left with the Council are of a formal nature and include the investment of the sheriffs with the insignia of their office and the administering of oaths required of ministers and other high officials and the making over of seals or other symbols of office to the holders of important offices But the most important business of the Council is the promulgation of Orders-in-Council which the Cabinet cannot issue The Council therefore is the body which is competent to give certain decisions the force of law

**The Cabinet—the Real Executive.** The Cabinet grew out of the Privy Council. When the Privy Council became too large, an inner Council chosen from amongst the members of the Privy Council at royal pleasure, came into existence. This body became distinct and separate from the parent body and acquired its present name during the reigns of Charles I and Charles II. But still then it did not acquire any recognised status. During the reign of William III and Queen Anne, the Cabinet acquired the status of the *de facto*, though not the *de jure*, consultative Council. With the accession of George I to the throne, the Cabinet came to be organised on its present basis. George I, because of his German extraction, could not understand English and hence ceased to preside over its meetings. The absence of the King led to the necessity of appointing a President to preside over its meeting and England was fortunate enough in securing the services of an exceptionally able person—Sir Robert Walpole who became the first Prime Minister. It was Walpole who gave the Cabinet its present form. Defeated on a vote in the House of Commons, Walpole resigned his office in 1742 and by his resignation, he established the principle of ministerial responsibility—that a ministry can remain in office only so long as it commands the confidence of the House of Commons. Since then, the doctrine of ministerial responsibility has been the guiding principle of the British constitution.

Certain innovations were introduced in the organisation of the Cabinet during emergencies, especially war. The outbreak of the war in 1914 necessitated the formation of a Coalition Cabinet in place of government by party majority. Thus the old idea of maintaining a party unity was sacrificed in order to cope successfully with the exigencies created by the war. The Imperial War Cabinet of Mr Lloyd George was formed of the representatives of three important parties. To ensure prompt and quick decisions in times of war, the size of the Cabinet was reduced to five and later on to six memberships. Before 1916, the Cabinet had no secretariat. The war of 1914 saw the establishment of a Cabinet secretariat which arranges all business of the Cabinet and keeps record of its proceedings. From 1931 to 1939, there was a national government consist-

ing of members drawn from three distinct parties. This was not technically a coalition like that during the war but this was a measure adopted by the Labour Premier Ramsay MacDonald who found himself in a minority in his Cabinet on questions of economic and financial matters. The conservative party had a majority in the cabinet and they could not come to an agreement with their colleagues of the other parties. Thus the national government was on the verge of a crisis on the fiscal policy of the government. But a dissolution of the Cabinet was considered undesirable at this stage and the crisis was averted by another ingenious innovation, viz, agreement to differ. By this famous agreement, the minority group in the Cabinet was allowed not only to speak but also to vote against the majority of the Cabinet. It was a great departure, though for the time being, from the established practices of the Cabinet system. During the Second World War, though no Imperial War Cabinet on the model of the last Great War had been formed, yet following the practice of the last Great War, the War Cabinet was formed on a broader basis and leaders of all important parties were asked to join the government. Another war time innovation introduced by Mr Churchill was the delegation of his function as the leader of the House of Commons to another Cabinet minister. This relieved the Prime Minister of the necessity of frequent attendance in the Legislature and gave him ample time to devote to the work of successful prosecution of the war. All those changes were possible only because of the flexible character of the Constitution.

**Formation and Composition of the Cabinet.** The Cabinet is formed in the following manner. After a general election the King sends for the leader of the majority party in the House of Commons and asks him to form a Cabinet. The leader of the party becomes the Prime Minister who submits to the King a list of his colleagues. In selecting his colleagues, the Prime Minister must take into consideration their ability, political opinion and other factors which will contribute to the solidarity of the Cabinet. The King then formally appoints them. The size of the Cabinet varies between 20 and 25. According to the Ministers of the Crown Act 1937, at least three Cabinet

Ministers must be appointed from the House of Lords. Cabinet Ministers are: Prime Minister and First Lord of the Treasury, Chancellor of the Exchequer, five Secretaries of State for Home Affairs, for the Dominions, for Foreign affairs, for colonies and for Scotland, President of the Board of Trade, Minister for Agriculture and Fisheries, President of the Board of Education, Minister of Health, Minister of Labour, Minister of Transport, Minister of Co-ordination, Lord President of the Council, Lord Privy Seal, Postmaster-General, First Commissioner of Works and Minister of Pensions. Since 1946, the three offices, viz., those of the First Lord of the Admiralty and Secretaries of State for War and Air have been replaced in the Cabinet by one Secretary of Defence. Of the latest development, mention should be made of the new office of the Minister of Commonwealth Relations.<sup>1</sup> The personnel of the Cabinet is not fixed. It is for the Prime Minister to decide who shall be included. The decision of the Prime Minister is, of course, influenced by various considerations, such as, the importance of a department in the policy and programme of the government, party strategy, attitude of other Cabinet Ministers and the like.

**Salient Features of the British Cabinet.** The characteristics of the Cabinet system may be enumerated as follows —

(a) *Political Homogeneity.* Members of the Cabinet usually belong to the same political party and profess the same political views.

(b) *Close correspondence between the Legislature and the Executive.* The Cabinet is, so to say, a committee of the Legislature. Its members are members of either House of Parliament. The Cabinet is composed of the influential members of the majority party in the Legislature and thus reflects its political colour.

(c) *Ministerial responsibility.* The responsibility of ministers is two-fold—legal and political. Legally, every minister is responsible for the advice that he may give to the King. This is the reason why every act of the King must be countersigned by a minister who will be liable in a court for the legality or otherwise of the act. This is illustrated by the maxim—"The King can do no wrong." Political responsibility implies that



the ministers, jointly and severally, are responsible to the House of Commons and must tender their resignation when they fail to command the confidence of the House. But it should be noted here that now-a-days, the Cabinet seldom goes out of the office on losing the confidence of the House. It generally resigns after a general election. Its ultimate responsibility is to the nation and not to the Legislature.

(d) *Unity and Solidarity of the Cabinet.* The Cabinet is a corporate unit, standing or falling together as an indivisible whole. In its meeting, an individual member may not come to eye with his colleagues in regard to a particular policy, but differences must not be publicly expressed. The Cabinet is a unit—a unit as regards the Sovereign—a unit also as regards the Legislature. They sail in the same boat. They float or sink together.

(e) *Leadership of the Prime Minister.* The unity and solidarity of the Cabinet are secured by the leadership of the Prime Minister. The Prime Minister has been described as "the keystone of the Cabinet arch". From the formation of a Cabinet to its dissolution, it is the Prime Minister who directs, controls and guides the Cabinet as a whole. The following remark will speak eloquently of the unique position held by him. "Nobody knows where other Ministers reside but even the fooliest of fools knows the significance of 10, Downing Street."

(f) *Secrecy of Cabinet Meeting.* Strict secrecy must be observed in connection with the proceedings of the Cabinet meeting. This is an essential feature of Parliamentary system.

**The Cabinet and the Ministry.** In England, a distinction must be drawn between the Ministry and the Cabinet. The ministry consists of those members of Parliament who hold important administrative posts and go out of office when the Cabinet resigns. The ministry is a bigger body consisting of about seventy members drawn from four main groups. The *first* consists of the heads of the greater and lesser executive departments. *Second*, some high officers of state like the Lord Chancellor, the Lord Privy Seal who, however, are not in charge of any department. *Third*, all parliamentary under-secretaries, who act as spokesmen of their departments in the

House of Commons when the departmental head is a member of the House of Lords and 'junior ministers' are also ranked as ministers. *Lastly*, five officials of the Royal household like the Treasurer, are given the status of ministers. The Cabinet is a much smaller body. Its members are selected by the Prime Minister. The Cabinet is essentially a policy-forming body while the ordinary ministers are mere departmental chiefs having nothing to do with the formation of policy. The ministry as a whole never meets but acts only as individual chief of a department. It has no collective responsibility like the Cabinet. But the ministry has a legal status while the Cabinet is unknown to the constitution—it is the product of constitutional conventions. "In sum, the Cabinet officer deliberates and advises, the Privy Councillor decrees, and the Minister executes. The three activities are easily capable of being distinguished, even though it frequently happens that Cabinet officer, Privy Councillor, and Minister are one and the same person."

**Functions of the Cabinet.** The Cabinet is the pivot round which the whole machinery of the government revolves. The main functions of the Cabinet may be summarised as follows —

(a) The final determination of the policy to be submitted to Parliament, (b) the supreme control of the national executive in accordance with the policy prescribed by Parliament, and (c) the continuous co-ordination and delimitation of the activities of the several departments of the state.

The Cabinet formulates the national policy to be followed with regard to current problems both at home and abroad. It determines how the authority vested in the Crown shall be exercised. The Cabinet also formulates the legislative programme for each session of Parliament and thus controls legislation through its power of initiating bills. Cabinet members are not only the heads of executive departments, they are also Parliamentary leaders. Almost all important bills are introduced by Cabinet members who pilot them through the different stages of legislation and get them passed by their followers who constitute the majority in the House of Commons. The framing of the Budget is also in the hands of one

of the important members of the Cabinet—the Chancellor of the Exchequer. The Cabinet by threatening to exercise its power of dissolution can get the Budget passed by the House, if the latter does not agree by mere persuasion. Thus we see that the functions of the Cabinet are both executive and legislative. In the words of Bagehot, "It is the hyphen that joins the buckle that fastens the Executive and the Legislative departments together."

**Committee of the Cabinet.** From one point of view, the Cabinet itself is a committee of the Privy Council; from another, a committee of the majority party of the legislature. The committee itself, i.e., the Cabinet sometimes is divided into committees for the purpose of quicker and more efficient discharge of its functions, especially of those which relate to technical matters. Such committees are formed from among its own members and such non-Cabinet members whom the Prime Minister chooses on account of their expert knowledge about the work to be done by the committee. The modern tendency is to have a number of standing or permanent committees to which important matters are referred. Some of the important committees which have been formed in recent times are the committee of Imperial Defence, the Committee of Home Affairs, a production committee. There are also some *ad hoc* committees to examine and report upon particular problems and they terminate on completion of their job. But these committees, it must be remembered, are only advisory. The Cabinet may or may not accept their recommendation.

**The Cabinet in relation to the Crown.** The Cabinet as we have already seen, is a unit as regards the Sovereign, who is the nominal Executive while the Cabinet is the real Executive. The Crown appoints the Prime Minister who forms the Cabinet. The Cabinet gives advice to the King as a single team and is legally responsible to him for its policy and action. But this responsibility is merely a legal fiction inasmuch as every act of the Crown must be countersigned by, at least, one minister who will be held liable for the act.

**The Cabinet in relation to the Legislature: Recent Tendencies.** Cabinet members are appointed from amongst the members of the Legislature and are responsible to Parliament

for their policy and action. They remain in office so long as they enjoy the confidence of Parliament. After the revolution of 1688, the centre and force of the state shifted from the King to Parliament. This theory of Parliamentary omnipotence was put by the Duke of Devonshire in 1893 in the following words —“Parliament makes and unmakes ministries, it revises their action. Ministers may make peace and war but they do so at the point of instant dismissal by Parliament from office and in affairs of internal administration, the power of Parliament is equally direct.” †One of the historic powers of the House of Commons is to drive a ministry from office. The power was continually used in the 19th century and strong ministries having Parliamentary support were dismissed by the House of Commons. But in recent years, the Cabinet has gradually usurped the powers and functions of Parliament which has been reduced to a mere ‘registering automation’. Members of Parliament still possess the right to ask question and to criticise the policy of the Executive. They can ventilate their grievances and theoretically possess the power to dismiss a ministry by a vote of no-confidence. But the power of Parliament has progressively declined—the day of private members has passed away, perhaps never to return. It has considerably declined as the strength of the party has progressively increased. The factors that have contributed to the progressive decline of the power of Parliament on the one hand and the steady rise of the power of the Cabinet on the other, are many. The growth of Cabinet dictatorship is partly due to strict party discipline and partly to the rise in the cost of election. Besides these, the Cabinet is armed with a dangerous weapon, namely, the threat of dissolution in case the House refuses to approve measures initiated by the Cabinet. Thus members of Parliament would sacrifice their individual judgment by approving measure which they might dislike rather than run the risk and incur the expense of a general election by opposing the measure. The power of dissolution has given the Cabinet a more free hand not only in the matter of execution of its policy and programme but also in law-making. It introduces bills, levies taxes and determines the amount of expenditure. It determines the time-table of the House and thereby it has limited the scope for introduction of public

bills by private members. Private bills have become uncommon today. Furthermore, the system of closure which puts a stop to debates is used as a check on undesirable criticism of government measures by private members. Thus Parliament has lost even the power of effective criticism. The system of payment to members has also destroyed their independence. The threat of dissolution is sufficient to force the members to submission because a dissolution means loss of membership of the House which will deprive the members of the precious £700 which they earn annually as their allowance. Besides, dissolution is followed by fresh election in which it is not possible for a candidate to seek election unless he is backed by a party both by party propaganda and party funds.

The reasons for the decline of Parliament are primarily two in number. *Firstly*, the growth of an active public opinion outside the House has enabled the Cabinet to answer for its policy and action direct to the Electorate rather than through their elected representatives. The members of Parliament have lost much of their initiative, independence and freedom of action in the face of an alert and intelligent electorate who take direct interest in the affairs of the state. *Secondly*, owing to the widening of the electorate and the increase in the cost of election, party discipline is strictly enforced. This has left the private members quite helpless in the hands of party leaders who determine everything for the party. Party followers are only to obey and not to question. They do not think but the leader thinks for them. Thus the centre and force of the state have once more shifted from Parliament to the Cabinet.

**Pivotal position of the Cabinet.** The central position occupied by the Cabinet in the constitution of the country has been variously described as "the keystone of the political arch", "the steering wheel of the ship of state"—the steersman being the Prime Minister. The Cabinet is the real executive which directs, controls and supervises the work of the entire machinery of the government. The Cabinet decides policies of the state about home and foreign affairs and these are carried into effect through heads of departments.

Not only in administration even in legislation and finance,

the Cabinet has come to have so much to do with them that it may be safely asserted that now-a-days it is the Cabinet that legislates, with the advice and consent of Parliament. 'It is true that members of Parliament who are not ministers can initiate bills but private members' bills have little chance of receiving attention of the House unless they have been able to secure the support of the Cabinet. At the opening of every parliamentary session, the Cabinet prepares the speech from the Throne and places it before the House. The present state of the nation, the future policy as well as the legislative programme of the executive are embodied in this speech and these Parliament is urged to adopt. Besides, the time-table of the House is prepared by the Cabinet which has enabled it to preempt every minute of the House in such a way as to translate its legislative programme into law. The application of the different methods of closures to put a stop to further discussion on debates hostile to its own policy has gagged the opposition.'

Thus the Cabinet occupies a unique position relating to both administration and legislation. It not only formulates policies, but makes decisions, drafts bills on all important matters. Parliament is simply to give effect to its decisions with or without criticism. The right to initiate, Parliament has surrendered to the Cabinet, the right to criticise, it still possesses though without its former effectiveness. Thus the Cabinet is a combining committee—a link between the executive and legislative departments. This combination of executive and legislative powers in the Cabinet invalidates the application of the theory of separation of powers to the British Constitution.

Virtually therefore, it is the Cabinet which rules the nation. The question is where does the Cabinet derive its ruling power from? Why does the whole nation submit to its decisions? The answer is very simple. As has been pointed out by Bagehot, the Cabinet in England is a board of control chosen by the legislature out of persons whom it trusts and knows to rule the nation. The Cabinet is composed of members drawn from the majority party in Parliament, whose recognised leader becomes the Prime Minister. Party discipline requires that party followers should support the policy and programme of

the Cabinet. It is the interest of the majority party to see that the Cabinet consisting of its own party leaders should retain office as long as possible. It is therefore only natural that the rank and file of the party in the House should blindly support the policy of their leaders who have formed the Cabinet. Lowell has rightly remarked, "The machinery is one of wheels within wheels, the outside ring consisting of the party that has a majority in the House of Commons, the next ring being the ministry, which contains the men who are most active within the party, and the smallest of all being the Cabinet, containing the real leaders or chiefs." Thus Cabinet dictatorship is not incompatible with parliamentary sovereignty.

**Future of the Cabinet.** The steady increase in the power of the Cabinet coupled with the decline of Parliament suggests that the British Cabinet is gradually drifting towards the Non-Parliamentary Executive. The main characteristic of the Parliamentary Executive consists in its direct responsibility to the Legislature but the Cabinet today is practically independent of the control of the Legislature. True it is that the House makes the Ministry but it is also true that the Ministry can unmake the House. The Cabinet owes its ultimate responsibility to the electorate on whose verdict depends the tenure of its office and also the ultimate sanction of its policy and programme. Therefore it is not unlikely that the inherent flexibility of the British constitution will, in course of time, transform the Parliamentary Executive into its Non-Parliamentary prototype of the U.S.A.

Again, the Cabinet system of government, as it is understood in England, is dependent on a bi-party system for its smooth working. When the bi-party system is disturbed by the rise of a third party or by other cross currents, coalitions, though short-lived, come into existence. There are at present three major parties in England and if the parties tend to break up into independent party groups, coalition ministries which are exceptions in England, will become the rule. Already there has been a split in the Labour party and if this tendency gradually gathers strength, a time may come when the British Cabinet will have to be moulded on the French model, as a result of the growth of multiplicity of parties.

**The Prime Minister.** Perhaps there is no other living political functionary who occupies a more powerful position than the British Premier. Being the leader of the majority party in the Legislature, he is practically a self-appointed man in his high office. He is the chairman of the Cabinet, presides over its meetings and guides its deliberations. In Cabinet meetings, usually, the decision of the majority prevails but in case of a difference of opinion, he can compel his dissentient colleagues either to accept his decision or resign. He also plays the rôle of an umpire in case of a dispute among his colleagues and his decision is final. Other members of the Cabinet are in charge of their respective departments but the Prime Minister exercises a general supervision and control over all the departments of the state. He is, in the words of Bagehot, the pivot on which the entire governmental machine revolves. This unique position occupied by the Prime Minister should not lead one to compare him with Cæsars. He is no doubt the head of the Cabinet but he is only the *primus inter pares*, the first among equals. Other members of the Cabinet are his colleagues and not his subordinates and therefore their views should also be given due consideration. The Prime Minister also acts as the connecting link between the Cabinet and the King. Although other ministers have free access to the King, none of them would approach the sovereign without first consulting his Premier.

The Prime Minister is not only the head of the Executive, he is also the leader of the Legislature and in that capacity he exercises an enormous influence over the Legislature. His other colleagues make statements in Parliament in connection with the policy and action of their own departments but the Prime Minister as the representative of the Cabinet makes statements concerning every aspect of the policy of the Government as a whole. He prepares the speech from the Throne in which the general policy and programme of the government are set forth for discussion and criticism by the Legislature. So long as he is supported by a party a majority in the Legislature, he can make and unmake laws, levy taxes and direct all the forces of the state. The Prime Minister is thus the real head of the Executive, the leader of



the Dominant Party in the legislature and as such, the leader of Parliament. He is also the accredited leader of the political sovereign—the electorate to whom he can appeal whenever a recalcitrant House disobeys his mandate. Thus the Prime Minister pilots the ship of the state on whose intelligence, sagacity and ability depends the fate of the biggest empire of modern age. He possesses great powers but the actual exercise of these powers depends to a great extent on the personality of the person who occupies the office of the Prime Minister. If the Prime Minister is a man of great personality towering head and shoulder over his cabinet colleagues, he can have his own way in every branch of administration without the least resistance from any quarters. Again his powers are also determined partly by the personality of his other Cabinet colleagues. If some of them, say the Minister of Foreign Affairs or the Chancellor of the Exchequer, are strong men of independent views, the Prime Minister's actual powers are very likely to be diminished as happened during Ramsay MacDonald's Ministry in 1935. But it is curious to note that such an important office was so long not recognised by law. It was the Ministers of the Crown Act, 1937, which gave legal recognition and a salary of ten thousand pounds to the office of the Prime Minister.

**How a Ministry is ousted.** The ministry can be ousted in the following ways. *Firstly*, if during the discussion of the Budget, a token cut in the salary of the minister is passed by the House, the Cabinet must resign. *Secondly*, if any government measure is turned down by the House, the Cabinet may resign if it thinks that the disapproval is a sign of lack of confidence. *Thirdly*, the Cabinet may resign when a private member's bill is passed against the opposition of the government. *Fourthly*, the unity and solidarity of the Cabinet require that the Cabinet as a whole should resign when a vote of censure is passed by the House on a particular minister. *Fifthly*, the Cabinet is to resign in case of a vote of no-confidence by the House against the general policy of the government as a whole. *Lastly*, the Crown has the right of dismissing a ministry. But this practice is obsolete now. It should, however, be borne in mind that any of these methods is seldom

used now-a-days. In case the Cabinet is not sure of a majority in the House, it can make an appeal to the electorate. The Prime Minister can advise the king to dissolve Parliament and order a general election.

### **The Administrative Departments.**

The Cabinet formulates the policy while all duties regarding the implementation of the policy and routine business are left to the various departments of the state. Each department is invariably headed by a minister of the Cabinet rank who is responsible to Parliament for everything done or left undone by the department. The departmental head, i.e., the minister is assisted by two under-secretaries, one parliamentary under-secretary and the other permanent under-secretary who is a member of the Home Civil Service. The parliamentary under-secretary is a member of the Ministry and in England the practice is that both the ministers, i.e., the departmental head of the Cabinet rank and his parliamentary under-secretary are chosen, one from the House of Lords and the other from the House of Commons so that in both the Houses there is at least one member of the Government who has authority to answer questions connected with the work of the department.

A brief outline of the departments of the Government together with the work they perform is given below.

(1) *Home office*—The Secretary of State for Home affairs is in charge of this department. This department is concerned with the control of police, prison, public order, naturalisation and extradition.

(2) *Foreign office*—This is one of the most important offices of the state which is in charge of the Secretary of State for foreign affairs. This department deals with foreign policy and regulates the country's relation with foreign powers. The appointments of consuls and diplomatic agents to foreign countries are its principal functions.

(3) *Colonial office*—The Secretary of State for colonies looks after the work of this department which consists in the administration of colonial affairs including the appointment of colonial Governors.

(4) *Commonwealth Relations office*—This department has also a Secretary who deals with the Dominions and the Imperial Conferences.

(5) *Defence office*—Formerly, the work of this department used to be carried on by three independent departments, namely, war office, the ministry of Air and the Admiralty. Now they are under a co-ordinated Ministry called the Defence Ministry in charge of the Secretary of State for Defence.

(6) *Scotland office*—There is a Secretary of State for Scotland who performs functions connected with the administration of Scotland.

(7) *The Treasury Department*—The Chancellor of the Exchequer is the head of this department which prepare the budget and controls the revenue and expenditure of the state.

(8) *Board of Trade*—This department which is headed by a minister called the President looks after commercial and industrial policy and collects statistics.

(9) *Ministry of Education*—There is a Minister of education in charge of the administration of all education services

(10) *Ministry of Agriculture and Fisheries*—The department deals with the problems connected with agriculture and fishery and regulates marketing schemes.

(11) *Ministry of Health*—It is concerned with health services and looks after housing and town planning

(12) *Ministry of Transport*—It is concerned with the administration of railways, tramways, canals roads, bridges, etc

(13) *Ministry of Labour*—This department has assumed great importance in recent times in view of the growing activities of the trade unions. Its main task consists in administering the Conciliation Act and unemployment Insurance Act

Besides these, there are three other Ministers, namely, the Lord Chancellor who is the President of the House of Lords, of the Court of Appeal and of the Chancery Division, Lord Privy Seal and the Chancellor of the Duchy of Lancaster who are Ministers without portfolio

### **Advisory Committees.**

Attached to each of these Government Departments, there is an Advisory Committee consisting of non-official members drawn from men of expert knowledge and first-hand information. The function of these committees is to help the particular ministry with their expert opinion and advice and the system of advisory committees is of utmost importance in the public administration of Great Britain in view of the fact that it creates the feeling in the minds of the people that important decisions of the Government are taken on the basis of specialised knowledge of the non-official experts and thus the system helps to strengthen the confidence of the people in their government. But it should be borne in mind that the advice of these committees is not binding upon the departments concerned nor are the committees responsible for any decision made by the Government on the basis of such advice.

**The Permanent Executive—The Civil Service.** The Executive departments of the government are generally headed by laymen who have neither the knowledge nor the experience necessary for carrying on the work of their departments. Thus Munro observes, "The British War office has been headed at times by a philosopher or a journalist, the Admiralty by a merchant or a barrister, and the Board of Trade by a university Professor." This seems to be an anomaly of the constitution. If the minister is a weak man, he will be completely at the mercy of his subordinates who are not only far more experienced than their master but also possess greater knowledge about the details of their departmental work. Under these circumstances, the power of the permanent officials tends to increase and thus acts as a serious menace to popular government.

But the danger is not so serious as it seems to be. The principle on which the Executive in England is organised is that for the due discharge of the executive functions, two kinds of officials are necessary. It is the duty of the one set of officials to lay down the policies which the other set is to carry out according to the directions of the former set. The former class of officials need not be experts, for their business is not to work but to see that the work is done

properly according to their directions by other officials. Those who actually carry out the directions and translate the policy into action must be men of experience and have knowledge of the actual working of their respective departments. Thus the actual work of day to day administration is done in England by the members of the permanent Civil Service who are recruited by a system of competitive examination and hold office during good behaviour up to the age of sixty. These officials give advice to the ministers on all technical matters and carry on the work of government in accordance with the principles laid down by the ministers. Responsibility and not expertness is thus the earmark of the English Executive. The system of amateurs at the head has also conferred a great advantage upon the government because, the ministers not being experts, can look upon the problems of the government from a broad national point of view. Moreover, the system averts the inevitable conflict that is likely to arise when an expert supervises the work of another expert. The amateur at the top is to tell the permanent officials what the public demand.

### Administrative Services.

The administrative services in Great Britain were reorganised in 1918 and the services are at present classified into four main divisions.

The first and the most conspicuous of the services is the *Administrative class* which comprises about four thousand officers, both men and women. The topmen of this class are the permanent secretaries who act as the principal advisers to the ministers and are recruited generally by a system of competitive examination and sometimes by promotion.

Next in importance is the *Executive class* numbering twenty-four thousands. Recruitment to this class is mainly by competitive examination and partly by promotion from the next lower class.

The third category is the *clerical class* consisting of about 125,000 including both men and women recruited generally at the age of 16—17. The clerical work is done by this class.

The lowest rung in the ladder of administrative service is the Clerical Assistant class who are recruited solely from girls by competitive examination at the ages of 16—17.

**His Majesty's Loyal Opposition.** The development of parliamentary government in Great Britain has been considerably influenced by the rise of political parties. Modern parliamentary democracy depends for its successful working on the organisation of political parties and the work of the government is carried on more efficiently under a bi-party system. Parliamentary government is essentially a government by discussion and compromise and it implies not only a parliamentary majority but also a parliamentary minority. The majority party runs the government and the minority party always seeks to expose the defects in the policy and the programme of the majority party. Government by parties has now become so common that representative government is unthinkable without them. The tradition of government by parties is discernible throughout the long political history of England, though the parties of the earlier times were not political parties in the modern sense of the term. They were merely 'factions' and when one of these factions gained control of the government, its principal task was to harry the other faction of the land. The factions were mutually hostile to one another and were incapable of brooking any opposition to the government. Since the beginning of the eighteenth century, the idea gradually gained ground that men could be in opposition without being enemies of the state and that a strong opposition is essential to the successful working of a government. As soon as Englishmen realised this fact, they not only reconciled themselves to the existence of an opposition but welcomed it as a 'wholesome spur to efficient administration'. Factions which were formerly looked upon as enemies of the state came to be recognised as 'His Majesty's Loyal opposition', an indispensable part of the machinery of government.

In England, therefore, there is hardly any bitterness of feeling between the party in power and the opposition in view of the fact that the opposition grew out of historical necessity and it has been accepted as a natural and necessary part of

the government. The function of the opposition is not to discredit the government with a view to capturing power but to allow the majority party to govern the country till it succeeds in obtaining the support of the voters and defeat the government in a general election. The function of Parliament is not to govern but to criticise and criticism of government measures is effective when it comes from the opposition which can look upon all problems of the state from altogether different points of view. As democratic governments are based on the principle of discussion and compromise, the opposition in a democracy also exists by agreement. Both the party in power and the opposition know that the one is to rule and the other is to criticise and check the excesses of a democracy and consequently both function in close co-operation with each other. In England, the Prime Minister has perhaps as many points of contact with the leader of the opposition as he has with his cabinet colleagues. In Parliament, the opposition is always accommodated in settling matters of debate, in fixing the time to be devoted to the discussion of major bills. The leader of the opposition or a leading member of the opposition, is the chairman of the Public Accounts Committee and in foreign affairs, the government and the opposition have very seldom the occasion to differ. As a matter of fact, the leader of the opposition is consulted in so many parliamentary matters and his opinion counts so much in all these matters that he may be ranked in order of importance next only to the Prime Minister.

The insertion of the term *loyal* before 'opposite' is very significant and well shows the fact that the majority party and the minority party are not at daggers drawn but are prepared to co-operate in all matters of the state which are calculated to promote national interest. His Majesty's opposition has grown so important that it has obtained statutory recognition by the Ministers of the Crown Act, 1937. The leader of the opposition has to devote so much of his time in the work of the government that he cannot attend to any other business and as such he is now paid a salary of £2,000 annually.

May we not ask a question at this point that if the opposition is loyal to the government which seeks to pacify it by

frequent consultation and by handsome emoluments paid to its leader can such an opposition effectively hold in check the party in power? Critics point out that important members of the Treasury Bench and of the Opposition are often connected by matrimonial alliances or they may happen to be fellow-students of the same educational institutions or directors of the same industrial or business organisation. Under these circumstances, it is too much to expect that the opposition will effectively put the ministry on its mettle. The purpose of having an opposition is totally foiled when the opposition is subservient to those whom it is pledged to oppose.

The truth is that politics is a game with the Englishmen and not a real fight. They always place national interest above party ideology or party interest. They differ only to agree in matters of vital interest to the nation.

**The Legislature—Parliament.** The British Parliament legally includes the King, the House of Lords and the House of Commons. It is an absolutely sovereign Legislature in the sense that it can pass, repeal or amend any and every law. There is no authority recognised by law which can override a law passed by it. It has also the right to amend the constitution. Unlike the Supreme Court in the USA, there is no Court in England which can declare an act of the British Parliament null and void. Thus there is no law both ordinary and constitutional which the King-in-Parliament cannot make or unmake. So it has been said that the British Parliament can do everything except that it cannot unsex, that is, it cannot make a man a woman and a woman a man. Lord Courtney has rightly remarked that "the fundamental fact of our constitution is the absolute unqualified supremacy of the Parliament."

### **Parliamentary Sovereignty.**

According to Dicey, sovereignty of Parliament means

- (i) that there is no law which Parliament, i.e. the King-in-Parliament cannot make,
- (ii) that there is no law which Parliament cannot repeal or modify; and



- (iii) that there is in the British constitution no clear distinction between constitutional law and ordinary law.

It is evident from the above that Parliament can make or unmake any law, however illogical, illegal or even immoral it may be. There is no court in England which, unlike the Supreme Court of the U.S.A., can declare an act of Parliament to be invalid. Further there is no restriction on its authority to pass constitutional laws in the ordinary process of legislation and its authority extends to every part of the king's dominions.

A critical examination of the above analysis as given by Dicey reveals the truth that Parliamentary sovereignty today is a mere legal fiction and not an actual fact. Theoretically speaking, Parliament includes the King, the House of Lords and the House of Commons. But since the passing of the Parliament Act, 1911 and its subsequent amendment in 1949 Parliament really means the House of Commons. So if Parliament possess any supremacy, that supremacy is held entirely by the House of Commons. But then what is the House of Commons worth? It is dominated by the majority party, i.e., the party in power. It is a well-known fact that in Great Britain, the Cabinet which is the smallest and the inmost wheel of the party machinery contains leaders who alone exercise this supremacy. Today, Parliamentary sovereignty has been further limited by judge-made laws, delegated legislation and a new system of administrative law which is gradually making its way in the British constitution. Moreover, it is now an established principle of the British constitution that International Law forms a part of the law of the land. The recognition of this principle has seriously curtailed the sovereignty of British Parliament inasmuch as a law which is repugnant to the principles of International law cannot be enacted by Parliament. Lastly, its authority to make laws for the Dominions has now become a mere legal fiction. The Statute of Westminster provides that any modification of the laws governing succession to the throne or royal titles is subject to the approval of the Parliaments of all the Dominions and not of that of the Mother country alone. In the same way, Parliament today cannot amend the constitutions of the Domi-

nions according to its free will The Canadian constitution, for example, can be amended only by the British Parliament and even today, Parliament does it but it does so strictly in accordance with the convention that amendment proposals must come jointly from the Provincial and Central governments of Canada Parliament simply ratifies the proposals in the form in which they are presented

So a great change has come regarding the concept of Parliamentary sovereignty and this change has affected both the character and contents of Parliamentary Sovereignty Besides these, it should be remembered that the existence of an alert and intelligent public opinion in Great Britain acts as a check upon Parliamentary sovereignty. Parliament must not flout public opinion which may endanger its duration of office Lastly, even the almighty Parliament cannot bind any future Parliament

**The House of Lords—Composition and Functions.** The House of Lords is the oldest legislative chamber in the world. At present there are about 845 members of a mixed body of six groups which represent different classes of persons The House is composed of (a) the Princes of the Blood-Royal, (b) hereditary Peers including those of England created before the union with Scotland in 1707, those of Great Britain created between 1707 and the union with Ireland in 1801, and those of the United Kingdom created thereafter, (c) 16 representative Peers from Scotland elected for a single parliament, (d) 28 representative Irish Peers elected for life At present there are only six Irish representative Peers, (e) 26 Ecclesiastical Lords, (2 Archbishops and 24 Bishops), (f) 9 Lords of Appeal or Law-Lords appointed for life These Law-Lords, appointed from amongst the distinguished members of the Bar, perform the judicial functions of the House of Lords The Lord Chancellor is the President of the House but he has no such power as is possessed by the Speaker of the House of Commons The presence of three members form a quorum but no bill can be passed unless there are at least 30 members present The House holds its sessions simultaneously with those of the House of Commons

The functions of the House of Lords are mainly three,

viz., *legislative, judicial, and deliberative* As a co-ordinate branch of the Legislature, every bill, to become an act, requires its assent But as a law-making body the House is far less powerful than the House of Commons Prior to the passing of the Parliament Act, 1911 the House theoretically possessed co-equal powers with the House of Commons in the field of legislation But the Parliament Act 1911, has greatly reduced its law-making powers

The main Provisions of the Parliament Act of 1911 are as follows —

(a) If a money bill having been passed by the House of Commons and sent to the House of Lords at least a month before the end of the session, is not passed by the Upper House without amendment within one month, then such bill is to be presented to the Crown and will become an Act of Parliament on receiving Royal assent

(b) The act defines money bills and makes provision that in case of disagreement, the decision of the Speaker of the House of Commons will be final

(c) Any other public bill, if passed by the House of Commons in three successive sessions, with an interval of at least two years between its first and final passages, will become an act on receiving royal assent, notwithstanding the dissent of the House of Lords This provision has been modified by the Parliament Act of 1949 A bill may now become an act notwithstanding the dissent of the House of Lords provided it has been passed by the House of Commons in two successive sessions (instead of three as in 1911 Act), and provided one year (instead of two) has elapsed between the date of the first Second Reading in the House of Commons and the final date on which the bill is passed by the House of Commons for the second time

(d) The duration of a Parliament was also reduced from seven to five years But Parliament being a sovereign body can extend its life-time beyond five years if such necessity arises

The object of the act was to curb the power of the Upper House in such a way as to enable the Cabinet to have its way

in legislation and administration in accordance with the wishes of the people as expressed through their chosen representatives in the Lower House. The general effect of the act was that the House of Lords lost all control over money bills. It could not initiate money bills but since the passing of the act even its assent to money bills has become unnecessary. In regard to all public bills other than money bills, the House of Lords still possesses a veto but only a suspensive veto. It can delay the passage of a bill for a period of one year only. The provision of the act with regard to public bills is very significant. Formerly, if the House of Lords rejected any Government bill, it could not be passed into law without dissolving the House of Commons and ascertaining the verdict of the electorate on the issue by a general election. Now, after the passing of the act, the dissolution of the Lower House has become unnecessary.

**Judicial Functions of the House of Lords.** The Parliament Act of 1911 has, however, left intact the judicial powers of the House. The House of Lords is the highest court in Great Britain and North Ireland. It exercises both original and appellate jurisdiction. (a) It exercises its original jurisdiction when it tries its own members for felony or treason. The House also acts as a Court of Impeachments brought by the House of Commons. (b) The House is also the Supreme Court of Appeal in Great Britain and Ireland, excluding Eire. But these functions are not exercised by the whole House sitting as a court. They are now exercised by the Lord Chancellor and nine Law-Lords who may be occasionally assisted by other lords who have held high judicial offices.

**Privileges of the Peers.** The members of both the Houses of Parliament enjoy certain privileges in common, such as freedom of speech, freedom from arrest, etc. In addition to the privileges common to both, the Lords possess a number of special privileges.

(a) They have the right of individual access to the King while the Commons can approach the King collectively through the Speaker. (b) They have the right to be summoned by individual writs while the Commons are summoned by a gene-

ial will (c) They have the right to act as a final court of appeal in Great Britain and North Ireland (d) They have the right to try impeachments brought by the House of Commons (e) Formerly, they exercised the right of proxy voting but it was abolished in 1868. (f) Every member has a right to record his note of dissent against any decision of the majority in the journals of the House

**Utility of the House of Lords.** Though its powers have been considerably curtailed, it still plays an important part in the work of the government. The proper function of a second chamber is to revise and to act as a check on hasty and ill-considered legislation. The British House of Lords does those functions by examining and revising bills brought from the House of Commons. The House also does another great service by refusing to pass a bill twice with a view to drawing the attention of the nation to that particular measure. The interposition of delay by the House enables the nation to examine the *pros* and *cons* of that measure. Again, the House of Commons has no time to go in for a full and free discussion on all bills. It is the House of Lords which has the time to discuss all measures fully. It also initiates bills of a non-controversial character. Finally, the House acts as a reservoir of Cabinet members and its contribution to the rank of Cabinet members does not compare very unfavourably with that of the House of Commons. Though not an elective body, the House can claim as its members men who have honoured the nation in different walks of life. Ogg says, "It is doubtful whether, by and large, the actual working House of Lords is surpassed in its resources of intelligence, integrity, and public spirit by the House of Commons. Industry, finance, agriculture, science, literature, religion—all are represented there." These are the reasons why the House has survived in spite of its undemocratic and apparently useless character.

**Reform of the House of Lords.** The hereditary character coupled with the conservative preponderance in the House of Lords has contributed to its unpopularity which has led to a clamour for a change in its composition and power. So long as the conservative party was in power, the two Houses pulled well with each other but conflict between the two arose when

the liberals came into power and the conflict reached its climax when in 1909, the House of Lords refused to pass the finance bill sent up by the Liberal Ministry of Mr Asquith. The refusal to pass the finance bill terminated in the passing of the Parliament Act of 1911, which crippled the powers of the House as a law-making body. Since then various proposals have been made from time to time for reforming the House of Lords. But it should be noted here that even before the enactment of the Parliament Act of 1911, several proposals were broached in the 19th century to reform the House. While the several Reform Acts were being passed between 1832-95, attempts were made to reorganise the House but all these attempts failed for want of support.

**The Lansdowne Plan.** The first and the most notable of these proposals of reform was the Lansdowne Plan which contemplated a House with a total membership of 330, 100 of whom were to be nominated by the Crown from the rank of peerage or from outside, 120 to be elected by the House of Commons sitting in regional groups and some five to be elected by the whole body of bishops. This proposal was intended to satisfy the Liberals who were determined to pass the Parliament bill but the proposal was not taken seriously by the House.

**The Bryce Plan.** In 1917, a Parliamentary Commission was formed under the chairmanship of Lord Bryce to study the various proposals that were put forward from various sources. The committee submitted its report in 1918 and made some tentative proposals. The committee recommended that (a) the Upper House should be reduced in size, not exceeding 327 memberships, (b) the duration of the House was to be twelve years, one-third retiring every four years, (c) two-thirds of the members are to be elected by the method of proportional representation by the House of Commons, the members of which are to be grouped in thirteen divisions on regional basis and the remaining one-third are to be elected from the peerage, (d) differences between the two Houses are to be referred to a joint committee made up of thirty members from each House. This plan was also rejected especially on

the ground of the provision for settlement of disagreements by joint conference.

**The 1922 Resolutions.** In 1922, Lloyd George's Cabinet appointed a committee of its own members to consider the question of reform and submitted five resolutions to the House of Lords for discussion. The resolutions were similar to those recommended by the Bryce Committee and they failed to arouse interest both of the Lords and of the public and hence were abandoned.

**Cave Proposals.** A Cabinet Committee was appointed in 1925 which published its report in 1927. According to Cave proposals, the House was to consist of 350 members, excluding the princes of the Blood Royal and Lords of Appeal. The Crown was to nominate a limited number of members for twelve years, one-third of them retiring every four years. The hereditary peers were to elect from among them a number of members for twelve years, one-third of whom retiring every four years. The most noticeable feature of the proposals was that the question whether a bill was a money bill or not was to be certified, not by the Speaker, but by a Standing Committee of both the Houses. The Cave proposals also faced strong opposition and were abandoned.

Lord Clarendon put forward a proposal of reform in 1928 on the lines of Cave proposals. In 1933, Lord Salisbury also made another proposal in the House of Lords and introduced a bill which however did not survive the second reading. The bill proposed a total membership of 320 in the Upper House of whom 150 to be elected by the peers from among themselves, 150 to be elected from outside and the rest to be nominated by the Crown. The decision with regard to money bills is to be made by a joint committee of both the Houses under the chairmanship of the Speaker.

The Labour Party went to the length of adopting the policy of abolishing the House, if the latter were bent on creating obstructions to its policy and programme.

In spite of the various attempts made from time to time, the House of Lords still persists and remains unchanged. The

reason for its survival in the age of democracy lies in its weakness. Munio has rightly remarked that "By becoming weaker it has grown stronger. At best it can now delay legislation, it can no longer thwart the will of the popular House." Besides, peerage in England is not a rigid caste. There is a flow between the nobility and the commonalty. Viewed either from the standpoint of composition or of power, the House of Lords is no longer a menace to democracy and hence the British people have not yet seriously taken up the question of its reform. The House of Lords is not likely to pass in a storm as is apprehended by many. Its inherent capacity to bend will save it from complete breakdown.

**The House of Commons.** The House of Commons consists of members, all of whom are elected representatives of counties, and boroughs. The Representation of the People Act of 1918 and the Equal Franchise Act of 1928 have granted a more or less universal franchise to men and women who have reached the age of 21. These Acts have completely changed the original aristocratic character of the House by transforming it into a House in which the various interests of the state are properly represented. Since the creation of the Irish Free State, the total number of members has been reduced from 707 to 615, of whom 492 are elected from England, 74 from Scotland, 36 from Wales and 13 from Northern Ireland on the basis of one member, on the average, for every seventy thousands of the population. These members are elected for a period of five years.

**Functions of the House of Commons.** Since the passing of the Parliament Act, 1911, the British Parliament has come to mean the House of Commons which is regarded as a model of Parliaments throughout the world. It is the visible centre of the English political system with a venerable antiquity and inspiring tradition around it. The unique position which the House occupies in the English political system is due to the controlling authority which it exercises over *legislation, administration, the executive, management of public revenue and direction of financial policy*.

The most important function of the House is law-making. No law can be passed or amended or repealed without the



most careful and detailed examination by the House. All proposals either for raising or spending money are also subject to the approval of the House. It has also the right to criticise the general policy which lies behind the estimates of revenue and expenditure. Next in importance to its function of law-making, the House controls the machine by which the country is governed. The Executive, i.e., the Cabinet is responsible to it for its policy and action. Every act of the Cabinet may be questioned, approved or disapproved by the House and in case of disapproval of the executive policy by the House, the ministry must either resign or appeal to the electorate. The House can call attention to abuse and demand redress of grievances by asking questions to Ministers for information. The system of questioning acts as a check on negligence of duty on the part of the executive departments. Lastly, the House is a splendid forum for training as well as testing men who can safely pilot the ship of the state.

But the House of Commons of today is not the House as it was yesterday. Today, the House is scarcely a legislative chamber, let alone its control over administration and finance. Sidney Low has rightly remarked "the show of power is with it." Much of its efficiency has passed to other agents. Its own servants have become, for some purpose, its masters. The Cabinet has usurped the powers and functions of the legislature.

**Privileges of the House.** These privileges embrace (a) freedom from arrest. The members enjoy this special privilege during and for forty days before and after each session of Parliament, except in cases of grave offences like treason, sedition, etc. (b) Freedom of speech—a privilege granted by the Bill of Rights, 1689. A member cannot be prosecuted for his words and speeches uttered in the debates of the House. (c) Right of collective access to the Crown through the Speaker. (d) The right to regulate its own proceedings. (e) The right to commit to prison for contempt,—for breach of privileges.

**The Speaker.** The Speaker or the President of the House of Commons is an interesting person who occupies a unique position in the British constitution. Originally, when the House was merely a petitioning body, it was the Speaker who

was to present the petitions of the commoners to the King. He was the spokesman of the House in relation to the King and hence arises the name Speaker.

The first task of a new House is to elect its Speaker. The election of the Speaker is seldom contested, the rule being that the outgoing Speaker, so long as he wishes to remain in office, is elected unopposed. In case a new Speaker is to be elected, the Prime Minister consults other party leaders and selects a man usually the Chairman of the Committee of Ways and Means. Though chosen by the Prime Minister, the Speaker must be formally elected by the House and approved by the Crown. He draws a salary of £5,000 annually and gets a residence free of all charges. When he retires, a peerage and pension awaits him. The Speaker must cease to be a party man as soon as he is elected. He must shun all party colour and quite unlike the Speaker of the American House of Representatives, he must maintain an attitude of strict neutrality in politics.

The duty which the Speaker is to perform is of a varied nature and requires ability, tact and above all, a cool temper. He is to conduct the meetings of the House and as such he interprets and enforces the rules of the House, maintains order and decorum in debates and decides points of order, his decision being final. He votes only in case of a tie and this casting vote also is exercised by him in such a way as to avoid making the decision final so that the House gets another opportunity for considering the measures. The Parliament Act of 1911 has given him the right to determine whether a bill is to be regarded as a money bill or not. All debates are addressed to Mr Speaker whose main duty consists not so much in speaking as in listening to the weary speeches delivered by members.

**The Committee System.** Owing to the increase in the volume of work with which a modern Legislature is confronted, it has been the normal tendency of all representative assemblies to refer their business to smaller committees for their due deliberation. It has also become the practice of the British House of Commons to refer all legislative measures to one of the five committees which are constituted at the beginning of each session. The personnel of these committees

is selected by a *Committee of Selection* which, in its turn, is formed at the beginning of each session at a conference between the Government and opposition party-leaders. The committees are (1) *Standing Committee on Public Bills*. There are five such committees, each consisting of a number of members varying between 30 and 50, with the right to co-opt 15 to 20 additional members. These committees which consist of specialists deal with public bills referred to them. (2) *Select Committees*. These are created from time to time to consider and report on specific measures referred to them by the House and on the completion of their report, they go out of existence. They consist of 15 members. (3) *Sessional Committees*. These committees are formed for a single session to deal with specified matters such as the examination of petitions. (4) *Private Bills Committees*. These are small committees, each consisting of four members. The committees deal with private bills which are opposed and exercise a quasi-judicial function in so far as they hear evidences and arguments from interested persons and submit their decisions to the whole House. (5) *Committee of the Whole House*. This is in fact the whole House sitting as a committee. The difference is this that when the House sits as a committee, it is presided over not by the Speaker but by the Chairman of the committee, chosen in the beginning of each Parliament. The mace is also put under the table to show that the House is not sitting and the procedure also becomes less formal. A speaker as a committee member can speak more than once while as a member of the House, he is not allowed to speak more than once. When the committee considers revenue measures, it is known as the *Committee of Ways and Means*, when it discusses appropriations or expenditure, it is called the *Committee of Supply*.

**Process of Law-making in Parliament.** The stages through which a bill must pass before it becomes an act and law of the land are *drafting, introduction, first reading, second reading, committee stage, report stage* and *third reading*. Procedure for introduction of a bill in Parliament was very difficult until 1902 but now-a-days, it has become very simple. All that the introducer of a bill is required to do is first to draft his bill either himself or with the help of some other person and to

give notice of his intention to bring in a bill. On an appointed day, the introducer is called upon by the Speaker to present his bill at the clerk's table and the title of the bill is then read aloud by the clerk. This unceremonious procedure constitutes the first reading of the bill when no discussion on the bill is generally allowed except in the case of an important measure introduced by a minister. The bill is then printed, circulated among members and is scheduled to be taken up for its next stage.

On a date fixed by an order of the House, the introducer of the bill moves that the bill "be now read a second time." This is called the second reading and at this stage an opportunity for detailed discussion is afforded to all. The mover and his party members participating in the debate seek to defend the measure by lengthy speeches while the opposition attacks and exposes the defects of the measure and may even move an amendment to the effect that the bill instead of being now read, be read a second time three months or six months later when the House is not likely to be in session. If the amendment is accepted, the bill perishes then and there. Most of the private members' bills meet this fate at the stage of the second reading. But it should be noted here that the second reading of a bill is confined only to the discussion of aims and fundamental principles of a bill. No detailed discussion of the bill, item by item or clause by clause, is allowed at this stage.

If the bill survives the second reading, it goes to one of the regular standing Committees as directed by the Speaker of the House. It is here in the Committee stage that the bill is examined and discussed thread-bare. The Committee can make additions and alterations in the bill which, either with amendment as suggested by the committee or without it, is reported back to the House. But the report stage is dropped, if no amendment is proposed by the Committee. Thus in England, the report stage, in many cases is a mere formality inasmuch as bills are sent to the committees after second reading when the House has approved the general principles of the bill.

Then follows the final stage—the third reading of the bill. At this stage, no amendment to the bill excepting a verbal one

can be made though the opposition may criticise the general principle of the bill once more. The bill as it stands must be accepted or rejected as a whole. After the House has passed the bill as a result of voting at the end of the third reading, the bill is referred to the House of Lords where the bill passes through the same stages as in the House of Commons. Procedure in the House of Lords is much simpler and speedier because the House knows that its task is more or less of a formal nature, the real burden of responsibility lying with the House of Commons. The House of Lords usually passes the measures sponsored by the Commons without amendment and a bill after its long journey through many hurdles is sent for Royal assent on receiving which it becomes an Act.

In case of disagreement between the two Houses regarding a bill, two methods have at times been resorted to for overcoming such disagreement. The first method is to hold a joint conference consisting of twice as many members from the Commons as from the Lords. The second method is an exchange of written messages drawn up by a Committee of one House and sent to the other. But since the passing of the Parliament Act, 1911, enactment of laws especially financial legislation may be made even without agreement between the two Houses.

### **Procedure in regard to Money Bills.**

Money bills are those that propose either raising of revenue or its expenditure, either propose the raising of loans or its repayment. Money bills in Great Britain are generally classified under three distinct heads, namely, (a) finance bill, (b) appropriation bill and (c) consolidated fund bill. The Government of Great Britain maintains an account with the Bank of England and the whole proceeds of revenue are paid into this account which is called the *Consolidated Fund*. Money grants are made by Parliament from this fund.

The expenditure of the government is divided into two categories, namely, those expenses which are fixed by statutes and do not require the approval of Parliament annually. These expenses include the Civil List, repayment of national debt, salaries and pensions of the Higher Judiciary, salary of

the Comptroller and Auditor-General, etc. These are called Consolidated Fund Services. Besides the above, there are other expenses which are called Supply Services and they require the sanction of Parliament every year. These estimates are divided into votes which are further subdivided into sub-heads and items.

### **Appropriation Bill.**

In October every year, the different departments of the government are directed by the Treasury to submit an estimate of their probable expenditure for the ensuing year in prescribed forms furnished by the Treasury. The departments are required to draw up the estimates very carefully inasmuch as any increase in any item of expenditure must have to be accounted for. When the treasury is in possession of the estimates, it usually checks them up and any difference of opinion between the Treasury and a particular department is generally settled by joint conference. On the last week of January or early in February, these estimates are placed before the House of Commons for its sanction. The House as a whole then resolves itself into a committee—the committee of supply for considering the estimates. Usually the House gets twenty-six days time for considering the estimates of expenditure. After the estimates have been passed by the House sitting as a committee, the House again resolves itself into another committee—the committee of Ways and Means in order to sanction the withdrawal of sanctioned sums from the consolidated fund by the different departments. Thereafter the resolutions of the two committees are lumped into the form of a bill known as appropriation bill and sent to the House of Commons for its final approval.

### **Finance Bill.**

Meanwhile the different departments prepare the figures of probable revenues and if it is found that the probable estimates of expenditure exceed probable revenues, effort is made to reduce expenditure as far as possible without impairing the efficiency of public service. The Chancellor of the Exchequer places the whole thing before the Cabinet. After the

estimates and proposals have been fully discussed and agreed upon by the Cabinet, the Chancellor places it before Parliament and makes an elaborate budget speech. The revenues like the estimates are of two kinds. Most of the revenues excepting income tax, tea duty and few other taxes, have been fixed by permanent statutes. For them annual sanction of Parliament is not necessary. Revenues derived from income tax, tea duty, etc., require the annual sanction of Parliament. The House of Commons considers the revenue proposals sitting as a Committee of Ways and Means. When the revenue proposals have been sanctioned by this committee, it is embodied in a bill, viz., the Finance bill.

So the House of Commons is to sanction the estimates of expenditure and to provide revenues. When considering the estimates, it sits as a committee of the whole in supply. When providing funds, it sits as a committee of the whole on Ways and Means. The House sitting as a Committee differs from the ordinary sessions of the House in this that the proceedings are less formal in committee meetings. A member may speak for more than once. Such committee meetings are presided over not by the Speaker but by one of the chairmen and the mace is placed underneath the table.

After being fully debated and approved by the two Committees, the appropriation bill and the finance bill are sent to the House of Commons which passes them in the third reading. The bills are then certified by the Speaker as money bill and sent to the House of Lords which, according to the provisions of the Parliament Act, 1911, must pass them without amendment within one month. Then with the Royal assent which is a formal affair, the bills become Acts. All this takes time. So in order to enable the different departments of the Government to run the administration, the Committee of Supply passes *votes on account*, i.e., provisionally authorises the departments to spend small sums necessary to carry on administration till the budget is passed.

### **Parliamentary Control over Finance.**

The House of Commons exercises little control over the budget the whole of which is prepared by the Treasury.

department on its own responsibility. The House is debarred from making any proposal for new expenditure or for taxation; it cannot increase the amount of expenditure earmarked for an item nor can it alter its destination. Some portions of the revenue as the civil list, etc. are not subject to the annual vote of the House. Thus the Cabinet has a free hand not only in legislation but also in finance. The function which the House exercises is criticism of the financial measures whereby the House secures publicity for the measures. The only way by which Parliament exercises some control over the budget is through the Committee on public accounts. All financial accounts of the government are audited in the office of the comptroller and auditor-general who is appointed by the Crown. This official, after examining the financial accounts, submits a report to the House which, in turn, refers it to the *Standing Committee on public accounts*. This committee, appointed by the House of Commons, thoroughly examines the report and accounts, ask explanations of the cases of irregularity, if any in the accounts, and finally submits its report to the House. This scrutiny and examination of the accounts by the Committee of the House produce some moral effect upon the executive department.

**Procedure in regard to Private Bills.** A private bill is one which affects the interest of a particular locality or a group of persons, such as, the construction of tramways or railways, the supply of gas or electricity for a municipality, etc. A private bill is enacted through a procedure different from that of a public bill. Every such bill is to be accompanied with a petition and submitted to the Private bill office by its promoters. It cannot be introduced straight into any House. Simultaneously with the introduction of the bill, it is necessary that notice should be given to all parties concerned and also to the Government Departments. The bill is then scrutinized by Parliamentary officials known as Examiners of Petitions for private bills and when approved by the Examiners, the bill is read a first time in the House. If the bill is unopposed, a general discussion on the general principles of the bill takes place during the second reading of the bill. If the bill survive the second reading, it is referred to one of the



committees on private bills. The committee sends its report to the whole House where it is given a third reading and the rest of the procedure is the same as in the case of public bills. But if a bill is opposed, then the procedure is similar to that of a judicial enquiry. Both the contestants and the sponsors are to appear before a Private Bill Committee to which it is referred. The Committee hear both the parties, examine witnesses and consult experts. Then the bill is reported back to the House.

The procedure with regard to private bills no doubt possesses some definite advantages inasmuch as it prevents unnecessary waste of time of both the chambers and ensures careful and impartial consideration of measures affecting private interest. But the system suffers from serious limitations inasmuch as it entails heavy expenditure as the parties are to pay fees and engage lawyers to argue their cases. The system also interposes undue delay in legislation of this kind. In order to avoid these difficulties, the system of Provisional orders has been introduced.

**Provisional Orders.** It is a system under which the parties seeking to promote a particular interest of their own through legislation send a petition to the Minister of the Department concerned. The petition is then scrutinized by the Department after full enquiry and hearing all parties concerned. If approved, the Minister issues a Provisional order, embodying the bill. A Provisional order, however, requires confirmation of Parliament before it comes into effect. The usual practice is that several such Provisional orders are lumped into a Confirmation Bill by the Minister and introduced into Parliament. Such Confirmation Bills have become so popular that they are very seldom opposed. The system secures both economy of time and economy of expenditure.

### **Relationship between the two Houses of Parliament.**

Parliament in Great Britain consists of the King, the House of Lords and the House of Commons. The House of Lords constitutes the upper House or the second chamber and the House of Commons, the Lower House or the popular assembly. Viewed either from the standpoint of antiquity

or from that of prestige, the House of Lords is certainly superior to that of the Commons, but in point of powers, the Commons far supersede the Lords. Parliament, in reality, now means the House of Commons.

The House of Lords is not only elder to the House of Commons but it is numerically a bigger body consisting of about 850 members while the numerical strength of the Commons is only 630. The two Houses also differ in respect to their composition. Thus while the members of the Lower House are wholly elected on the basis of universal suffrage, those of the upper House are recruited mainly on hereditary principle and on the principle of nomination—both of which militate against the principle of democracy.

The main functions of the legislature are three, namely, to make laws, to control finance and to control the executive. The relationship between the two Houses can be better understood with reference to these three functions. Theoretically, the House of Lords possesses equal powers with the House of Commons so far as ordinary legislation is concerned. But even this power of the Lords has been virtually curbed since the passing of the Parliament Act of 1911 and its amendment in 1949. Now the position is that the House of Commons, even in the teeth of opposition of the Lords, can pass a public bill alone in one year's time. The House, however, cannot pass in this manner a bill which intends to extend the life of Parliament. Such a bill of course requires the concurrence of both the Houses. The House of Lords cannot initiate money bills which are presented before the House of Commons, nor can it amend money bills which are certified as such by the Speaker of the House of Commons. A money bill, if not passed by the Lords within one month after it has been sent to the Lords by the Commons, will become Act with the Royal assent notwithstanding the dissent of the Lords after the expiration of one month.

Again with the exception of a few scheduled offices, all other Cabinet ministers are recruited from the members of the House of Commons whose leader becomes the Prime Minister. Ministerial responsibility in Great Britain implies responsibility of the ministers to the House of Commons and

not to the Lords. It is only in respect to the exercise of judicial power that the House of Lords may be said to possess an exclusive power.

**Bureaucracy and Delegated Legislation.** As we have already seen, the Executive in England is characterised by amateurs at the top. The higher Executive, i.e., the minister, is a migratory bird—he comes and goes with the rise and fall of the party. It is the members of the permanent Civil Service who secure the continuity of work and by reason of their training and long experience they possess expert knowledge about their departmental work which the minister lacks. Hence the minister has to depend largely on the advice and suggestion of his subordinates. Sometimes the policy of a minister even is formulated by his department. The inevitable result has been that in England bureaucracy thrives under the cloak of ministerial responsibility. There has been an enormous increase in the power of bureaucracy. The growth of Cabinet dictatorship has also contributed, in no small measure, to the increase of the power of bureaucracy. The Cabinet has neither the time nor the competence to go into the details of administration and legislation and hence these details are left in the hands of the permanent officials who shape them mostly according to their will. Thus every government policy or every law bears the stamp of its bureaucratic design.

The British Parliament is at present overburdened with increasing volume of work so much so that it is not possible to make its statutes detailed and specific so as to cover all cases. It enacts laws in their broad outlines enunciating only the general principles involved in a particular law. The details are then filled in by the executive departments by issuing Rules and Orders. This power of the executive authority to supplement the laws passed by Parliament is known as *Delegated legislation*. Exceptions have been taken against such legislation because it is likely to affect the civil liberty of the people. As against this, it is pointed out that Parliament retains the right to annul any of these Rules and Orders though it seldom does so. A Committee on Ministers' Powers was appointed in 1929 to examine the nature of delegated legis-

lation. In the opinion of the Committee, the issue of such Rules and Orders was necessary because the details of legislation should be worked out by those who are trained experts. The Committee however opined that on matters of principle, the Executive should have no authority. It is also recommended that all Rules and Orders must be referred to a Standing Committee before they are issued. The Committee is to be set up by the House of Commons to which it will have to refer any objectionable feature which it may find in any of these Rules and Orders.

**The Judiciary—Organisation of the Courts.** The present judicial organisation of Great Britain is regulated by the Judicature Acts of 1873-1925. The courts may be divided into three classes, viz. Civil courts, Criminal courts and courts for hearing appeals from the Dominions and Colonies. The Criminal courts may be arranged in the following order from the lowest to the highest scale. *Firstly*, comes the *Court of Summary Jurisdiction*, which is held by the Justices of the Peace or Magistrates in case of towns. Above it is the *Courts of Quarter Sessions* with powers to try graver offences and to hear appeals from lower courts. Above it are the *Assizes*, so-called because they hold their session periodically from county to county. One of the judges of the High Court goes on a circuit and tries serious offences with the help of a jury. The assizes try both civil and criminal cases. The next higher court is the *Court of Criminal Appeal* with the right to hear appeals from all inferior courts on points of law. It consists of the Lord Chief Justice of England and all the Judges of the King's Bench Division. At the apex of the judicial system stands the House of Lords which hears appeals only in those criminal cases which are certified by the Attorney-General to that effect.

The lowest court in the case of civil suits is the *Court of Summary Jurisdiction* which tries petty cases. The next higher court is the *County Court*. Above it is the *High Court* with both original and appellate jurisdiction. Above the High Court is the Court of Appeal, consisting of five judges with power to hear appeals from the High Courts. The Lord

Chancellor is the President. The highest court of appeal is the *House of Lords*.

The English judicial system is marked by the absence of Administrative Law as in continental Europe. Independence of the Judiciary, another feature of the system is secured by executive appointment of the judges and also by making them irremovable during good behaviour.

**Local Government.** The whole of England has been mapped off into a number (a) Counties and (b) County Boroughs i.e., bigger towns. Each of these has its own elected council with an elective Chairman at the head to preside over its meetings. Within the limits imposed by the Imperial Parliament the councils manage their local affairs. The county has been divided into a number of (a) Rural Districts, (b) Urban Districts and (c) Municipal Boroughs each having its own elected council. The lowest unit is the Parish into which a Rural District is subdivided. Every Parish has its own elective Parish Council.

**The city of London** has its own separate organisation. It is divided into (a) City of London consisting of Lord Mayor, and three councils and (b) the County of London, divided into 28 metropolitan boroughs.

**Political Parties in England.** For the organisation of English parties see Part I Ch. XVII.

**Labour Party.** Of the existing parties in England, the Labour Party is the second biggest party. The members of this party are mainly drawn from such national organisations as Trade Union, Socialist and Co-operative societies and in general it has the support of the middle class. Since it assumed power in 1945, it embarked on a bold policy of social reconstruction. In domestic affairs the party adopted a policy of planned production for common use with a view to providing full employment, ensuring adequate health and nutrition, and full educational opportunities for all. The Labour Government adopted a policy of nationalisation which extended to coal industry, fuel, power, transport industries and the Bank of England. In colonial affairs the party stands for development of self-government for colonies and the grant

of full self-government to India and Pakistan is a proof positive of the sincerity of its colonial policy. In its foreign policy, the party is not definitely anti-Soviet, though it supports the Western Bloc scheme. It professes to outlaw war through the U.N. and is a signatory to the 'Atlantic Pact,' which is designed to prevent aggression in future.

**Conservative Party.** This party is the direct descendant of the Tory Party of the 18th and 19th centuries. The Party counts as its members great landlords, big businessmen, county squires, many church dignitaries and the Imperialists. The party also dominates over a section of working classes. The National Government of Great Britain was very successfully led by this party during the period of the Second World War. The party does not favour the scheme of nationalisation of industries and is definitely opposed to the policy of state interference in the domain of Industrial Rights. In its foreign policy, it is definitely anti-Soviet. It is opposed to the Labour Government's 'Liquidation of Empire Policy' and advocates closer unity among the members of the Commonwealth of Nations. The members are ardent protectionists and strongly advocate the idea of Imperial Preference. The leader of the party was Winston Churchill. Its present strength in the House of Commons is 321 members and it is the party in power which has formed the ministry.

**Liberal Party.** This party is the successor to the old Whig party in England and is composed of members mostly drawn from the middle class. They stand for free trade and *Laissez-faire*, although their traditional policy has undergone important modification. The Liberal Party today has lost much of its former prestige and influence owing to the disruption of the party into three independent groups. The leader is C. R. Davis. Present strength of the party in the House of Commons is only 5 members.

Besides the three parties mentioned above, there are a few other parties, such as, the *Communist Party*, *Liberal National Party*, the *Independent Labour Party*.

Of these parties, the Communist Party exercises some influence on certain sections of Trade unions. The Party ad-

vocates complete Nationalisation at home and close co-operation with the Soviet Government. In the last general election the Party failed to secure even a single seat in the House of Commons.

**The British Constitution—A General Survey.** The art of self-government, it has been said, is the greatest contribution of the Anglo-Norman races to the progress of the world. The political institutions which the inhabitants of the British Isles have evolved have not only preserved and promoted the democratic ideal of liberty in England but they have also influenced the growth of democratic institutions in other parts of the world. The British Constitution is not a make but a gradual growth.

The superiority of the British constitution to all other constitutions lies in its extreme flexibility and adaptability. The Constitution can be and has actually been shaped and fashioned according to the needs of time. It has therefore developed peacefully being comparatively free from revolutionary outbursts. *Secondly*, it is the oldest constitution of the world and though not written, it provides for maximum guarantee to individual liberty by recognising the principle of Rule of Law. *Thirdly*, the efficiency of the British constitution has been secured by the complete union of the executive and legislative powers which have made the working of the government smooth both in normal and abnormal times. *Fourthly*, the British constitution is marked by a happy combination of three different and opposite elements: monarchical, aristocratic and democratic. Monarchy supplies the dignified part of the constitution without being incompatible with the march of democracy. The House of Lords, at first sight seems to represent nobody but really speaking, the House is not less representative in character than the House of Commons. "Industry, finance, agriculture, intellectual as well as material, forces find expression." The most efficient part of the constitution is the House of Commons which represents everybody and conducts the real work of the government.

But since the time of the First World War, the British constitution has undergone important changes and certain

forces are at work which have threatened the sovereignty of Parliament and thereby the democratic ideal of liberty. The Cabinet, to be more accurate, the Prime Minister and a few of his influential colleagues, is more powerful today and exercises many of the functions which Parliament is still imagined to possess. The decline of Parliament and the steady increase in the power of the Cabinet have been explained in the following way by Sidney Low: "The encroachment of administration on the authority of Parliament, the growing power of the bureaucracy and its assumption of legislative and quasi-legislative functions, the influence of the great financial and mercantile interests upon public affairs, the indirect bribery of the constituencies by vote-catching politicians, and the susceptibility of the huge electorate to mass suggestion and group management—all these are symptoms and tendencies which need be watched and controlled."

If the danger to democracy in Britain is to be removed, it is to be done by restoring the omnipotence of Parliament by a reform of the Cabinet system. The programme of reform should be conceived on a broad basis so as to ensure a proper co-ordination of the work of the various departments and an effective control and regulation of the work of the bureaucracy. The size of the Cabinet should be reduced and this can be easily done by bringing allied departments under the control of one single minister. Thus the three departments of the Admiralty, the War Office and the Air Ministry may function together under one Minister of Defence. The British Cabinet is essentially a policy-formulating body but nowadays, it has allowed itself to be too much engrossed in details of administration and legislation, making it impossible for Cabinet members to give their attention to wider issues of policy. The creation of standing advisory committees on the pattern of the Committee of Imperial Defence—composed of well-informed persons drawn mainly from outside of government circles may relieve both the Cabinet and Parliament of the congestion of work and they may also give technical help to particular departments.

A school of reformers advocates the extension of the principle of Devolution to relieve the burden upon Parliament and



also to counteract the tendency to extreme centralisation. The pressure of business is so heavy upon Parliament that it cannot adequately perform all its functions. So it is proposed that certain matters of lesser importance such as housing, fisheries, poor-relief, etc., might be relegated to subordinate legislative bodies created either on territorial or functional basis.

Another important factor is to be taken into consideration in any scheme of reform of the British political system. Representative government is essentially a government by discussion, but in England, owing to the rigour of party organisation, the scope of free discussion is practically non-existent. Party followers are now mere tools in the hands of the party leaders. The rigidity of party discipline especially under the two-party system has tied the hands of the members of Parliament who have no other alternative than to carry out party mandates. The growth of multiple parties might give the citizens greater scope for freedom of their thought and opinion. Bureaucracy which has thrived in England under the cloak of ministerial responsibility is the greatest danger to democracy and this danger can be removed only by restoring Parliamentary control over the affairs of the government.

## SUMMARY

### *Sources of the British Constitution*

There are two main sources—(1) Law of the Constitution which include (a) Constitutional landmarks, (b) Statutes, (c) Judicial decisions, (d) Common law and (2) Conventions of the Constitution. The former comprises a body of legal rules which are enforceable in courts of law while the latter consisting mainly of political customs and usages are not enforceable. The sanction behind them is public opinion.

### *Characteristics of the Constitution*

(a) Unitary, Parliament being the sole law-making authority, (b) Unwritten, (c) Flexible, (d) Sovereignty of Parliament (e) Unreal, i.e., there is a divergence between theory and practice, (f) Unbroken continuity, (g) Rule of Law which implies legality and impartiality of law, (h) Parliamentary, and (i) Constitutional monarchy.

*The King.*

He is the head of the state and the entire administration is carried on in his name. He possesses extensive executive, legislative and judicial powers. He can appoint and dismiss all higher officers including the church dignitaries. He is the head of the armed forces. He can declare war and make peace. He can summon, prorogue or dissolve the House of Commons and can issue orders-in-Council. His power to veto bills is no longer exercised. He is also the fountain of justice and honour. But all his powers are now exercised by the Prime Minister and other Cabinet members who are responsible to Parliament. He enjoys immunity from political and legal responsibility as is implied in the constitutional maxim "The King can do no wrong." He reigns but does not govern. Although the king has lost all his former real powers, yet he has great personal influence. Hereditary monarchy inspires loyalty and reverence more than an elected President. Besides, he being the symbol of imperial unity holds together the different parts of the vast Commonwealth.

*The Cabinet*

It is an offshoot of the Privy Council and not recognised by law. It consists of about 20—25 members, all of whom are formally appointed by the king on the recommendation of the Prime Minister from among the leading members of the party having a majority in Parliament especially in the House of Commons. The Cabinet consists of the important members of the ministry, though all members of the ministry are not Cabinet members. All important decisions regarding the policy of the government rest with the Cabinet which meet under the chairmanship of the Premier. The principle of collective responsibility of the ministry has taken a firm root in Great Britain. The Cabinet is not only supreme in administration but it has also a free hand in legislation and finance. The Prime Minister can dissolve the House of Commons and order a fresh election. He can also compel his Cabinet colleagues to resign in case of serious difference of opinion or breach of Cabinet rules.

*Parliament*

It consists of the King, House of Lords and House of Commons. But now Parliament has come to mean only the House of Commons. The most important fact about Parliament is that it is a sovereign law-making body in the sense that (a) it can make all laws; (b) it can repeal or modify all sorts of law, and (c) there is no distinction between ordinary laws and constitutional laws. But this supremacy of Parliament is limited by Cabinet dictatorship, judge-made laws, delegated legislation and

the growth of administrative law Law passed by Parliament does not also extend to the dominions

### *House of Lords.*

It consists of 845 members of a mixed body of six groups comprising hereditary peers, elected peers of Scotland and life Peers of Ireland Ecclesiastical peers, Law-Lords and Princes of the Blood Royal Three members form the quorum but presence of at least 30 members is required to transact business of the House Lord Chancellor is President of the House which holds its sessions simultaneously with the House of Commons

The functions of the House are mainly legislative, judicial and deliberative Since the passing of the Parliament Act, 1911 and its subsequent amendment in 1949, the House has lost effective control over legislation, ordinary and financial It now acts as a deliberative body and exercises judicial power, both original and appellate, which is done by nine law-lords

Because of its undemocratic character, the House has lost its former importance and various proposals have been made either to abolish or to reform it But the House still continues because it renders certain tangible services to the nation

### *House of Commons*

It is the lower House consisting of members elected by universal adult suffrage by citizens of 21 years of age for a term of 5 years Members receive a salary of £ 6,000 and other allowances and certain privileges to enable them to maintain dignity and discharge their legislative functions properly

The House is the repository of all legislative powers It controls the executive and it also controls finance and exercises a general supervision over all the affairs of the State But today, the power of the House has passed on to the hands of the Cabinet which virtually rules the country

### *Bureaucracy*

It refers to the top men of the permanent civil service who advise the ministers and help them not only in day to day administration but also in the formulation of policies and laws The administrator being a bud of passage has to depend largely on these permanent officials who are experienced men in their departmental work Ministers and not bureaucrats are responsible to Parliament and this has led to an increase in the power of bureaucracy in Great Britain

### *Constitution*

between criminal and civil cases. The House of Lords is the highest Court of Appeal in all civil and criminal cases. The Privy Council is the ultimate court of appeal which comes from the Ecclesiastical Courts and also from the Courts of the Dominions and Colonies.

### *Local Government*

The local government in England is organised in the following way. The whole country has been divided into a number of *administrative Counties* which have been subdivided into *Urban and Rural districts*. These districts have again been subdivided in *Parishes* and a cluster of Parishes form the *Poor Law Unions*. Each of these units has an elective Council.

Central supervision over the units of the local government is great and is exercised by six departments of the Central Government. Although the control of the Central Government is on the increase, still it is not like the centralised system which prevails in France.

### *Party System.*

The most important feature of the English party organisation is the tradition of a bi-party system and that the party is inseparable from the government. It works both inside and outside the government. English political parties are well-organised. Each one of them has its network of organisation, both local and national. At present there are three parties, viz., the Conservative, the Labour and the Liberal, of which the conservative party is in power.

## QUESTIONS

1. Discuss the position and powers of the Crown in the British Constitution, with special reference to the legislation and the dissolution of Parliament. (C U 1940)

2. Discuss the privileges of the House of Commons in Britain. (C U 1941)

3. Discuss the position of the Cabinet in England. To what extent has the cabinet usurped the functions of Parliament? (C U 1942)

4. Examine the following statements with regard to the British Constitution

(a) 'The King never dies.'

(b) 'The King can do no wrong.' (C U 1943)

5. What constitutes the executive in England?

Describe its relation to the legislature. (C U 1945)

6 Discuss the relation between the laws and conventions of the constitution of England. Discuss Dicey's views on the nature of the sanction behind them.

(Dacca, 1941, 1943 (II), Cal 1950.)

7 "A House of Commons gives the Cabinet life, but normally, it can itself live only so long as it is prepared to go on giving life to the Cabinet." Examine the extent to which this statement holds good in (a) normal times, and (b) in crisis.

(Dacca, 1941.)

8 Describe the composition and functions of the House of Lords. Do you agree with the view that 'the House of Lords will pass in a storm'?

(Pat 1945.)

9 State the effect of the Parliament Act, 1911. Examine the effect of the Act on the position of the House of Lords.

(C U 1949.)

10 Trace the progress of a money bill in the British Parliament from its inception to Royal Assent.

(C. U 1951.)

11 "The Parliamentary system in Britain tends to make the Cabinet all powerful." Explain why this is so.

(C U 1952.)

12 'The British Legislature is anything but legislative in its main function.' Discuss.

(C U 1953.)

✓ 13 Explain the relation of the British Prime Minister to the Sovereign, the Cabinet, the House of Commons, and the party.

(C U 1954.)

14 "The House of Lords (in England) should be abolished, retained in its present form, or reformed. With which of these views do you agree? Give reasons for your answer."

(C U 1955.)

15 "The theory is that the House (of Commons) controls the government (in England). It is equally true to say the Government controls the House"—(Ivor Jennings)

(C U. Hon 1956.)

15 "The theory is that the House (of Commons) controls the government (in England) . It is equally true to say the Government controls the House"—(Ivor Jennings)  
(C U Hon 1956)

16. "The office of the Prime Minister (in England) is what its holder chooses to make it"—Asquith

Discuss the statement with special reference to the position of the Prime Minister in English Constitutional system  
(C U Hon 1952)

17. Discuss the implications of constitutional monarchy as it obtains in England

How far do you agree with the view that the British monarch is "a magnificent cypher—a cypher who signs everything, but signs nothing except in obedience to advice" .  
(C U Hon 1953)

18 How far do you agree with the view of de Tocqueville that "the English constitution has no real existence"

Give reasons for your answer. (C U Hon 1957)

19 Discuss the relationship between the Cabinet and the House of Commons in England (C U 1957)

20 "The English system of government is at once a monarchy, aristocracy and democracy" (C U 1958)

21. Discuss the position of the Cabinet in the British Constitution with special reference to its relation to (a) the Crown and (b) Parliament (C U 1959)

22 Distinguish between a Public Bill and a Private Bill in the British Parliamentary practice What are the stages through which a Public Bill must pass before it can become an Act of Parliament (C U 1960)

## CHAPTER II

### GOVERNMENT OF FRANCE—THE FOURTH REPUBLIC

#### *References :*

A Constitution for the Fourth Republic  
(Foundation for Foreign Affairs Washington.  
D.C. 1947)

The New Constitution of France by Gautam Dwivedi  
(*The Indian Journal of Political Science*, January—  
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The Constitution of the Fourth Republic by R. C  
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Modern Foreign Governments by Ogg and Zink,  
Part II, chs 24-27

**Introduction.** The remark that France served as the world's laboratory for political experimentation contains an element of truth. So many constitutions followed one another in quick succession during the period from 1785 to 1875 that the above remark cannot be treated as wholly unwarranted. The constitution that was drawn up in 1875 and which brought into existence the Third Republic was the most long-lived one. It lasted for about 65 years from 1875 to 1940, in which year, she was defeated and subjugated by Nazi Germany. During the period of German occupation of France from July, 1940 to May, 1945, a puppet government was set up by Germany at Vichy under Marshal Petain. This German sponsored government not only abrogated the constitution of 1875 which was based on the precious motto of liberty, equality and fraternity but also deprived the citizens of their fundamental rights.

The defeat of Germany by the allies in 1945 liberated France and she set herself to the task of framing a constitution for her own. Accordingly, a new Constituent National Assembly was elected on 21st October, 1945. The Assembly framed a constitution in April, 1946 which was however rejected by a referendum in May of the same year. In June, was elected a new Constituent Assembly which drafted a new Constitution in September, 1946. This constitution was finally adopted by a referendum, which took place on October 13, 1946 and came into force on December 24, 1946.

**Nature of the Constitution.** The constitution of the Fourth Republic consists, as usual, of a Preamble and one hundred and six articles. The new constitution has incorporated many of the provisions of the constitution of 1875. The preamble of the new constitution solemnly reaffirms the rights and freedoms of man and citizen as set forth in the Declaration of Rights of 1789. It further proclaims the following additional political, social and economic principles:—

- (a) Equal rights for women in all spheres.
- (b) The right of asylum in France, for anybody persecuted on account of activities in favour of freedom.
- (c) The right to obtain employment and the opportunity to work.
- (d) The right to strike as defined by law and the right to safeguard his interest through trade-union activity.
- (e) The right to participate in the management of industrial undertakings and the right to collective ownership of public services and monopolies.

Article 81 of the new constitution proclaims that "all citizens and nationals of territories within the French Union shall have the status of citizens of the French Union, which ensure them the enjoyment of rights and liberties guaranteed by the preamble of the present Constitution."

Thus it may be said that the new constitution has made elaborate provision for all classes of citizens within the Union not only for the protection of their fundamental rights but also for ensuring those conditions which will enable them to lead a decent life.

**Features of the New Constitution.** Like its predecessor, the new constitution is also mainly *written*, though supplemented by a few organic laws. The constitution, as drawn up by the Constituent Assembly in 1946, consists of a preamble and 106 articles which describe the government in its main outline. *Secondly*, the constitution is *unitary* and *parliamentary* in character and to this extent, it resembles the British constitution. In France, as in England, there is no



division of powers between the central and local governments, the latter being only so many convenient administrative sub-divisions of the former. There is a single supreme executive authority and a single supreme legislature which govern the whole country. Although in both the countries, the parliamentary system prevails the Cabinet of France is not only weaker than that of Britain but it cannot also claim the degree of stability as that of Britain. *Thirdly*, the constitution is *republican* in form and in this respect, it bears a superficial resemblance to that of the USA. The President of the Fourth Republic like his prototype in the U.S.A., is to be elected. *Fourthly*, the new constitution is a *rigid* one inasmuch as the ordinary legislature of France is incompetent to amend the constitution. Amendment of the constitution must be passed either by two-thirds majority of the National Assembly, or three-fifths of both the Houses. *Fifthly*, the constitution recognises the system of *droit administratif* as distinct from 'rule of law' in England. The French system does not recognise the principle of equality of all persons in the eye of law. Executive officers in France are not amenable to the ordinary courts of law but are tried by administrative courts for offences committed in their official capacity (For details regarding administrative law see Ch. XVI). But the judiciary in France, like the judiciary in the USA, does not possess the right to veto acts of the legislature. *Lastly*, the new Constitution also provides for the creation of two new institutions, viz., an *Economic Council* and a *Council of the French Union*. The Economic Council consists of 144 members representing various social and economic groups like the intellectual professions, chambers of commerce and trade and the organisation of workers and employers. The Economic Council is to assist the National Assembly and the Council of Ministers in an advisory capacity on all economic matters. It must be consulted on economic planning for full employment and nationalisation. The Council of the French Union is to consist of the President of the Union and the *Haut Conseil* and the Assembly. The Council is a representative body consisting not only of members from France but also from territories overseas.

**The Executive—the President.** The executive authority of the Republic is vested in the President who is elected by the two Houses of legislature, sitting in joint session by an absolute majority of votes. He is elected for seven years and can be re-elected only once. Article 44 of the constitution provides that members of families which have reigned over France are ineligible for the office. He draws a salary of 3,600,000 Francs per annum including allowance.

As the supreme executive head of the state, the President enjoys certain immunities. He is not amenable to the jurisdiction of ordinary courts but he may be impeached for high treason only by the National Assembly and is to be tried not by the Upper House but by the High Court of Justice to be constituted by the National Assembly at the beginning of every legislative session. The President may be removed from office only on his being convicted by the High Court of Justice.

**Powers of the President.** The executive authority of the state is vested in the President and is exercised in his name. He has considerable patronage at his disposal. He appoints members of the High Council of the French Union, and of the Committee of National Defence and many other high officials of the state. He presides over the Council of Ministers, the High Council of the French Union, the Committee of National Defence and the Supreme Council of Justice. He is also the chief of the armed forces. His diplomatic power consists chiefly in sending and receiving ambassadors and ministers. Treaties are negotiated in the name of the President and are ratified by him. He cannot declare war without the approval of the National Assembly. He can also grant pardon. The President appoints the Prime Minister—the President of the Council of Ministers but this appointment will not be valid unless the National Assembly gives him a vote of confidence.

The constitution has not conferred upon the President much legislative power. The French legislature is not summoned or prorogued by the President. But at the request of the Council of Ministers, the President can dissolve the lower House under prescribed conditions. Article 37 provides that

the President, through message to the National Assembly, can communicate with the legislature and demand the reconsideration of a bill passed by both the Houses. The President is not required to sign the laws passed by the legislature in order to make them valid. He does not possess any veto power over laws passed by the legislature. In this respect, the French practice is quite different from that of England or of the U.S.A. But the President has been vested with the power of promulgating laws within ten days of their approval by the legislature or within five days in case the National Assembly declares the law to be very important. The President has the power to issue ordinances for supplementing the laws passed by the legislature. Laws in France, are passed not in their details but in their general outline. The details are then worked out by executive decrees issued by the President.

**Position of the French President.** But the most notable feature of the powers of the President is that no act, order or decree of the President can be valid or put into force unless it has been duly countersigned by the Minister of the Interior and another minister. So the French President, like the British king, can do no wrong. For every act of the President the ministers and not the President, will be responsible to the legislature. As he is an elected officer of the state with a limited tenure of office, he does not command the same amount of influence and inspire the same amount of awe and reverence in the minds of the people as the British king. His position again is much inferior to that of his prototype in the U.S.A. The American President is the nominee of the nation and possesses real powers which have been conferred upon him by the constitution. The British king reigns but does not govern. The President of the U.S.A. governs but does not reign, but the French President is required neither to reign nor to govern. He is merely the ceremonial head of the state surrounded, of course, with much pomp and prestige. The elective character of the Presidency coupled with the lack of real power has reduced the office to virtual impotency. The President therefore has been left in the same position which was assigned to him by the constitution of 1875

**The Cabinet.** The President of the Republic is the

nominal executive head, the real executive powers being exercised by the Ministry. The size of the Ministry is fixed not by constitutional law or by statute but by the President in consultation with the Prime Minister. Article 45 of the new constitution prescribes the following procedure with regard to the appointment of the Ministry. The President of the Republic designates the President of the Council of Ministers, i.e., the Prime Minister at the beginning of each legislature but the choice of the President depends, to a great extent, upon the party situation in the National Assembly. There is some scope for the President to exercise his personal discretion and influence in choosing the Prime Minister as there are too many parties in the legislature. But the President's choice is limited by the fact that the Prime Minister thus selected by the President must be capable of forming a ministry which can command the confidence of the National Assembly. The Council of Ministers can take office only after their policy and programme have been approved by public vote and by an absolute majority of the National Assembly. Other ministers of the Cabinet are selected by the Prime Minister and all of them are formally appointed by the President by an executive decree provided the Prime Minister and his colleagues can secure a vote of confidence from the National Assembly. Thus the National Assembly really makes the Ministry. The ministers can attend both the Houses and their commissions.

The present strength of the Ministry is 15. Each minister is in charge of a department. The Departments are the following —Justice, Foreign Affairs, Interior, Armed Forces. Finance and Economic Affairs, Agriculture, Industrial Production, National Education, Public Works and Transport. France beyond the Seas, Labour and Social Security, Health and Population, Reconstruction, ex-service men and War Victims and Marine.

As in the previous constitution, the new constitution also makes a distinction between the Council of Ministers and Cabinet of Ministers. Although the two bodies are composed of the same personnel, the cabinet is a policy-forming body while the Council is an administrative body which exercises

general supervision over the administration of laws and formally issues decrees. The President of the Republic presides over the meetings of the Council of Ministers while the Prime Minister presides over the meetings of the Cabinet which decide the general policy of the government.

**Ministerial Responsibility in the New Constitution.** According to the old constitution, ministers were responsible to the 'Chambers' i.e., both the Upper and Lower Houses. But article 48 of the new constitution lays down that the ministers are collectively responsible to the Lower House—the National Assembly only for the general policy of the Cabinet, and individually for their personal acts. The constitution further provides that the question of confidence can be discussed after it has been discussed by the Council of Ministers on the initiative of the President of the council. A vote of no confidence entails the collective resignation of the ministry. But such a vote can be taken only 24 hours after the motion has been put to the Assembly. A vote of no confidence or a vote of censure in order to be effective requires that it must be passed by an absolute majority and by public ballot. The new constitution has also made a provision for the dissolution of the National Assembly by the Ministry. But the Assembly cannot be dissolved within the first 18 months after the election of a new Assembly. The provision with regard to the dissolution of the Assembly is as follows—If two cabinet crises take place within 18 months, i.e., if the Assembly compels two ministries to resign within the stipulated period then the Council of Ministers may request the President to dissolve the National Assembly. The Prime Minister must also resign with the dissolution of the Assembly and the President of the National Assembly will then become the Prime Minister. New elections must take place within 20 to 30 days after such dissolution. The New Constitution has thus sought to strengthen the position of the Cabinet a little and to this extent it may be said to have counteracted the tendency to very frequent changes of ministries in France.

The Prime Minister not only presides over the meetings of the Cabinet but he has also been granted certain special powers by the new constitution. Laws are executed by him

and many important appointments both in the civil and military departments are made by him. The direction of the armed forces and the co-ordination between the different branches of the national defence constitute his special charge

**Ministerial Instability in France.** The parliamentary system has taken a different form in France. In England, the parliamentary system of government has secured a fairly stable cabinet which is normally almost co-existent with its maker,—Parliament. But in France, the cabinet is proverbially unstable, the average life of a ministry seldom exceeding six months. As in the past, so also at present ministries under the new constitution are also subject to frequent changes. The reasons for this frequent change of Ministry may be attributed to three main factors, viz, (a) existence of numerous party groups in the legislature, (b) weakness in party organisation and party discipline and (c) want of Cabinet's effective power to dissolve the legislature.

In England, the leadership of the legislature is in the hand of the Cabinet and the latter can force its supporters in the House to accept its decision by a threat of dissolution which implies loss of membership, with the allowance attached to membership, cost of fresh election, uncertainty of nomination by the party. These considerations will dissuade the party supporters in England to oppose the policy and programme initiated by their party leaders who form the Cabinet. But in France the case is otherwise. The ministry being the result of coalition of several parties holding different views has no solid party support in the legislature. According to the terms of the new constitution, the Ministry can request the President to dissolve the Assembly but as we have seen, the conditions laid down by the constitution in this respect are so stringent that the Ministry can seldom exercise this power. Besides, the dissolution of the Assembly must be followed by the resignation of the Prime Minister. Thus legislative tyranny which was one of the characteristic features of the Third Republic has been left almost intact under the Fourth Republic.

**The French and the British Cabinets.** The British Cabinet is an extra-legal growth which rests purely on convention

The responsibility of ministers is also not enforced by law. In France, the ministers are jointly and severally responsible to the lower chamber according to the new constitution. *Secondly*, in England, the members of the Cabinet must be members of either House of Parliament but in France, they need not be members of either House. *Thirdly*, the British Prime Minister is the leader of the majority party and depends upon the support of his party in France, the Premier depends upon a coalition. He is more independent in this respect from party control. *Fourthly*, owing to the multiplicity of parties in France, none of the parties commands a majority of votes in the Legislature. The Ministry in France is always the result of a coalition and therefore lacks the political homogeneity of the British Cabinet. *Fifthly*, in France, the ministers draw a uniform scale of salary but in England, it is not so. *Lastly*, a change of the French ministry does not produce so far-reaching consequences as follows the change of a British ministry. A change of British Cabinet means a transfer of political power from one party to the other, a change in the entire personnel of the Ministry and a consequent change in the policy and programme of the government. But in France, it means only a reshuffling of cards. A new Ministry in France contains many of the members of the old Cabinet and the old policy of the government is followed with slight modification.

### The Legislature

**The Council of the Republic** Barring a brief period during the Revolutionary days, France has always adopted the bi-cameral system of legislature. The Council of the Republic is the upper house and the successor to the Senate of the Third Republic. The Council which was elected in November, 1948, consists of 320 members, of whom 255 represent French national territory, 14 represent Algeria and 51 French overseas territories. Members are elected by 'electoral colleges' consisting of the members of the lower house from each Department, the councillors of Arrondissements and delegates of the municipal councils of the communes. The election takes place on the basis of indirect universal suffrage. The Council is a permanent body, not subject to dissolution,

one-half of the members retiring each time, when new election takes place to fill up the vacancies. The council is presided over by an elected president whose main function is to maintain discipline in the House and to regulate the proceedings in the House. But the President has little work to do as the council is a dignified body which seldom indulges in unruly conduct calling for the intervention of the President.

**Powers of the Council.** The legislative power of the upper house is limited only to advisory functions like examining, and giving opinions upon, the projects and proposals of law initiated by the lower house and referred to it after a first reading in that house. The constitution has granted it the power to initiate measures but a bill in order to become an act does not require its assent. The New Constitution has clearly laid it down that laws are passed only by the lower house—the National Assembly. It can initiate bills other than money bills but all such bills are to be sent to the lower house without any debate. The Council can discuss the bill in detail only when the bill has passed through the stage of first reading in the Assembly. The decision of the Council on these bills must however reach the Assembly within 2 months after receipt of the bill. In case of bills relating to the budget or of bills certified as very urgent by the Assembly, the Council must make its conclusion with regard to such bills even earlier.

The Council however possesses the power to approve of any Draft Bill proposed for amending the constitution. It can also request, by an absolute majority of votes, that a bill passed by the lower house be referred to the Constitutional Committee to see whether it is inconsistent with any provision of the constitution or not.

It was said about the upper house of France that nearer than any other European legislative body, the Senate of France possessed the ideal of what a Second Chamber ought to be. The remark, though applicable to the old Senate, is wholly inapplicable to the present Second Chamber—the council of the Republic which has been divested not only of its power but also of its dignity and position. The Senate of the Third Republic theoretically possessed equal powers with the lower



house It could initiate all bills, excepting money bills which they could amend. Its approval was necessary when the President of the Republic desired a dissolution of the lower house The constitution of 1875 made the ministry responsible to the Senate as well, as on several occasions the Senate actually exercised this power of driving a ministry out of office Lastly, the special prerogative of the Senate was that of serving as a Court of Impeachment in trying high state officials including the President, ministers and others These powers the Senate used to exercise with such moderation that it had never had the occasion of going against strong currents of public opinion but asserting at the same time some of its powers whenever such assertion it deemed necessary In short, the Senate maintained a higher standard of ability and integrity both by its composition and function and commanded respect both at home and abroad The members of the lower house considered it a promotion to be selected as Senators

But the Council of the Republic possesses neither power nor prestige It is a legislative body without the power to make laws True it is that it has the power to suggest, but equally true it is that the Assembly has the power to reject its suggestion The fact that its assent is not at all necessary in passing laws reduces it to a purely advisory body It cannot even discuss a bill initiated by itself before the bill has been examined by the lower house The only power vested in it is a limited share in the amendment of the constitution

Thus the present Second Chamber of France is only a pale shadow of the old Senate which was commended as a model Second Chamber. The Framers of the present constitution had perhaps, in their mind, the German second chamber—Reichsrat—under Weimar constitution and perhaps they wanted to make the will of the people supreme in state affairs So the remark made by Bryce with regard to the French Senate that it was perhaps the weakest Second Chamber applies more truly to the present council rather than to its predecessor—the Senate

**The National Assembly.** The New Constitution has renamed the lower house as the National Assembly which was

elected for the first time in November, 1946. The Assembly has at present a total membership of 627 elected for four years from party lists at a single ballot with proportional representation by equal, direct and secret universal franchise. The present Assembly consists of members elected from eight different parties.

Although the normal duration of the house is four years it can be earlier dissolved by the President on the request of the cabinet. The constitution provides that the Assembly can be dissolved only when the Assembly has forced two ministries to resign within a period of 18 months. But such dissolution is not permissible if the resignation of ministers take place within 15 days of their appointment or within the first 18 months of the election of a new Assembly. A dissolution of the Assembly automatically leads to the resignation of the Prime Minister and a new assembly must be elected at least within a month.

**Powers of the National Assembly.** The National Assembly is perhaps the most ingenious handiwork of the makers of the Fourth Republic who shifted the centre of gravity of legislative power entirely from the upper house to the lower house. The provision of the constitution that laws are passed by the National Assembly has concentrated all legislative powers in the hands of the lower house, reducing the upper house to the position of a purely advisory body. The National Assembly has the last word on all proposals and projects of law. It also controls national income and expenditure. The Assembly has the special power of initiating proposals for expenditure as supplementary estimates and also can propose expenditure at the time of debate on the budget. In this respect, it possesses greater powers than the British House of Commons. The French Cabinet is responsible to it only and not to the upper house as was the rule under the previous constitution. It can force a ministry to resign by a simple vote of no-confidence. Besides, any revision of the constitution must be approved by two-thirds majority of the National Assembly or three-fifths majority of both the Houses. It has also the power to declare war on the advice of the Cabinet. The National Assembly, like other legislative bodies, has the

right to impeach the President and the Ministers who are tried by the High Court of Justice to be constituted by the National Assembly at the beginning of each legislative session.

The above review of the powers of the National Assembly of France clearly proves that of all the lower chambers we have studied, the National Assembly is the most powerful. In England Parliament has now come to mean only the House of Commons which was so long regarded as the strongest Lower House in the world. But the National Assembly of France may be said to be even more powerful than the British House of Commons. In spite of the enfeeblement of the House of Lords by the Parliament Act of 1911, the upper house in England can still obstruct the lower house by interposing delay but in France, the National Assembly has altogether a free hand in the making of laws. Then again, in England, the Cabinet has virtually usurped the powers of the lower house which is forced to approve measures formulated by the Cabinet. The threat of dissolution is an effective weapon in the hands of the British Cabinet but in France, the Assembly can make and unmake ministries at its sweet will.

**Organisation of the House—The President.** The National Assembly holds its sessions simultaneously with the Council of the Republic. It meets in regular session on the second Tuesday in January, and may not interrupt its session for more than four weeks.

The House elects its own President who unlike the Speaker of the British House of Commons plays an active part in the work of the House. He is not required to be absolutely neutral in party politics but he may continue as a party member and even may within prescribed limits, favour his party. The President can participate in the deliberations of the house and cast his vote, not according to well-defined rules like the British Speaker, but according to his own will. The Constitution has also granted some special powers to the President. In case of incapacitation of the President of the Republic, the President of the National Assembly is to take up the work of the President. *Secondly*, if the President of

French Republic fails to promulgate laws within 10 days or within 5 days in case of urgent laws, it will be the duty of the President of the Assembly to promulgate such laws. *Lastly*, in case of the dissociation of the National Assembly, the President of the Assembly will then become the Prime Minister

**The Committee System.** The Committee System in France differs fundamentally from that of either of England or of the USA. Many committees are formed in both the Houses. The lower house alone has 20 committees of 44 members each, of which the Finance Committee consisting of about 55 members is an important one. Committees are formed on party basis, each party electing such number of members to the committees as is determined by the *Bureau* of the Chamber. Committee members are usually elected for one year only but some of them may be re-elected for four years. The rule regarding membership of these committees is that no member can belong to more than two committees at a time but a member of important committees like those of Foreign Affairs and Finance, must belong exclusively to one such committee.

Besides ordinary members, each committee has three important functionaries, viz., the President, the Vice-President and *Rapporteur*, all of whom are elected by committee members. As in the old constitution, the new constitution has also granted great power and prestige to the President and the Rapporteur, the latter having practically the sole charge of the bill through the House. In England, the minister in charge of the bill pilots the bill in the legislature, in the USA, the Chairman of the Committee sees the bill through its course in the legislature but in France, it is the Rapporteur who not only prepares the report on the bill as amended by the committee but also pilots the bill through the legislature, the minister having no control over the bill. Thus the committee system in France with the President and the Rapporteur as the guardians of bills has seriously interfered with the principle of ministerial responsibility and the system has contributed, in no small measure, to ministerial instability. So great are the changes made in the bills by the committees that sometimes, the minister himself cannot recognise the

bill as his own handiwork. Thus committees in France are very powerful bodies with wide powers to recast bills. The system has considerably weakened the position of the French ministry by depriving them of that legislative leadership which is necessary to secure a strong and vigorous executive competent to cope with opposition. The President and the Rapporteur of French Committees have grown so powerful under the system that they virtually decide the fate of a ministry. But the system is not without its merits. As committees in France are composed of experienced and seasoned legislators, they keep not only the ministers in check but also act as a check upon the despotism of administrative departments with all their powers of enquiry and investigation. They also give correct lead to the legislature.

**The Judiciary in France.** The judicial system in France is based on the Code Napoleon which has profoundly influenced the judicial system in continental Europe. The English system is based on common law which is equalitarian in principle while the French system is based on Roman law which is not equalitarian in principle. Hence in France and on the continent, there are two sets of courts, ordinary courts trying cases involving private citizens and the other, administrative courts dealing with law-suits involving public officials or departments. First, we take up the organisation and function of ordinary courts.

*Courts of the Justice of Peace* This is the lowest court situated in each canton or groups of cantons, having both criminal and civil jurisdiction. The judges are appointed by the President of the Republic on the recommendation of the Ministry of Justice. They are recruited by a system of competitive examination by the Department of Justice, from amongst lawyers with at least two years' experience either at the bar or in a court. They are paid a salary and enjoy security of tenure.

*Courts of the First Instance* They are courts having both original and appellate jurisdiction with power to deal with both civil and criminal cases. There is one such court in almost all arrondissements, consisting of judges varying between 3 and 15. They hear appeals from the inferior Courts in certain specific cases.

*Courts of Appeal* There are 27 courts of appeal whose jurisdiction extends over one judicial province comprising one to seven Departments. The Court tries cases in three separate sections into which it has been divided. The sections are civil, criminal and indictment, each of which consists usually of five judges, but more judges may be appointed in case of necessity.

*Courts of Assizes* For hearing criminal appeals, there is a court of assizes in every department. The court consists of one judge from the court of appeal and two associate judges selected from the local courts of the first instance. It has only appellate jurisdiction over serious criminal cases which are tried with the help of jurors.

*Courts of Cassation* This is the highest court of appeal in France in ordinary cases, having no original jurisdiction. The Court consists of one President, three Presidents of sections and forty-five judges. The judges are appointed by the President on the nomination of the Minister of Justice and hold office during good behaviour. They can be removed by the Cassation Court only on conviction for misconduct. The Court which sits at Paris transacts its business in three sections. The first section known as chamber of requests examines whether civil appeals from lower courts can be heard or not. The second section, the civil chamber, hears these appeals after they have been passed by the chamber of requests. The third section, the criminal chamber, hears all criminal appeals.

The second set of courts consist of administrative courts which try suits brought against government officials by private citizens.

*Regional Councils* There are 22 such regional councils, each with a President and four councillors, all of whom are appointed by the Minister of the Interior. This court tries cases brought by private citizens against subordinate officials. Appeals from these courts are heard by the Council of State.

*Council of State* This is the highest administrative court exercising both original and appellate jurisdiction and commands great confidence and respect from the people. The work of the court is done in sections by the 39 Councillors,

appointed by the President on the recommendation of the Council of Ministers.

There is another Court known as the *Tribunal of Conflict*, whose main function is to decide the jurisdiction of ordinary courts and administrative courts in case of conflict between the two. The court consists of the Minister of Justice as the President, three judges from Cassation Court and three from the Council of State and two other judges selected by the original seven judges. Conflicts of jurisdiction however very seldom arise.

**Local Governments.** As we have already seen, France has a highly centralised system of government, the local governments having not only no initiative but only carry out the orders of the Ministry of the Interior.

*Department* The whole of France has been divided into 90 departments, each with a Prefect as the executive head of the department. The Prefect is appointed by the Minister of the Interior and occupies a dual position. He is, on the one hand, the nominee and agent of the Central Government and on the other, the agent of the local legislature and carries out the resolutions of the *General Council* which is the legislature of the department. The Prefect is in charge of the general administration of the department and is responsible to the Central Government and not to the General Council of the department. The members of the General Council are elected for a term of six years by universal suffrage, one-half of them retiring every three years. The General Council votes the annual budget but its originating powers are of a limited nature, though it exercises some amount of supervision and control over the affairs of the department.

*Arrondissement* There were 311 arrondissements or districts in 1946. It has a Sub-Prefect and an elective council. The Sub-Prefect is appointed by the Minister of the Interior and is subordinate to the Prefect. Its chief function is to distribute its quota of income among the Cantons. It can neither make laws nor vote money. It also serves as a judicial district.

*Canton* The Canton is not, strictly speaking, a unit of local government but it only serves as the electoral district for

returning members to the General Council and to the Council of the Arrondissement. There is a court of the Justice of Peace in each Canton.

*Commune* The lowest unit of local government is the Commune and in 1946 there were 37,983 Communes in France. The local affairs of a Commune are under a Municipal Council, composed of 10 to 36 members, elected for six years on the basis of universal suffrage. Each Council elects its own Mayor. Thus unlike his superiors, the Prefect and the Sub-Prefect, the Mayor is an elected officer but he also has a dual position like that of the Prefect or the Sub-Prefect. He is the agent of the Central government and at the same time the representative of the Commune and as such carries out the resolutions of the Municipal Council. He appoints his subordinate staff and with their assistance conducts the administration of the Commune. The administration of the Commune is also subject to the supervision and control of the Prefect and other higher authorities.

Thus we find that municipal home rule has no place in French political philosophy. The departments, the arrondissements and the Communes are mere agents of the Central government, having no inherent powers.

*Administration of Paris* There is a Municipal Council with a President (Prefect) at the head. The city has been divided into 20 arrondissements which have again been grouped into 9 sectors. Each sector has its own Mayor. For the maintenance of law and order, there is a Prefect of Police who is also appointed by the President of the Republic along with the President of the Municipal Council of Paris.

**Political Parties in France.** As we have seen, (Ch. XVI, Part I) the party system has not been very successful in France owing to lack of party organisation and party discipline. The result has been that there are numerous parties in both the chambers, none of them commanding a solid majority to support a ministry. At the present moment, there are about eight parties in both the chambers. The National Assembly which is the most democratic and powerful chamber consists of the representatives of the following parties



*Communist Party* Out of a total of 619 memberships, the Communist party is represented by 183 members in the National Assembly and by only 21 in the Council of the Republic. The Communist party in France has been inspired by the ideals of Russian Communism and its policy and programme are, to a great extent, influenced by the central bureau of the party at Moscow. The party advocates a bold policy of nationalisation of the means of production and democratisation of all institutions, political and economic. In foreign policy, the party advocates co-operation with the Soviet Bloc rather than with the Anglo-American Bloc. The leader of the party is Maurice Thorez.

*Movement Republican Populaire (MRP)*. This party which is of recent origin has a membership of 173 in the National Assembly and only 11 in the upper house. The party was formed by the followers of General de Gaulle who was opposed to the surrender of France to Germany and was in favour of offering resistance to the German invaders. In its policy, the party supports limited nationalisation but in its foreign policy, it advocates co-operation with the Western Bloc. The present leader is Georges Bidault.

*Socialist Party* The socialist party is one of the most influential parties in France which played a prominent part in the provisional government that was formed after the liberation of France in 1945. It is led by former Prime Minister Leon Blum who is one of the first rank politicians of France of today. This party has 104 members in the Assembly and 62 in the Council. Though a supporter of the Western Bloc, the party is not anti-Soviet in its foreign policy. At home, it advocates a policy of limited nationalisation.

*Republican Party of Liberty* This is also a new party formed, in 1945, of the union of 4 rightist parties, which are strong supporters of the Western Bloc. It is opposed to rapid socialisation of France. The party strength is 38 in both the chambers. The party leader is Paul Reynaud, another renowned politician of France.

*Radical Socialists* This party is rather conservative in its policy and programme in so far as it supports the constitution of 1875 and is opposed to nationalisation.

*Democratic and Socialist Union of Resistance.* This party has been formed by the coalition of non-Communist and Socialist resistance. It is under the able leadership of Edward Heiriot, an ex-Prime Minister of France. The united strength of the party in the National Assembly is 71.

Besides these there are a few other parties in both the chambers.

**Amendment of the Constitution.** Article 90 of the Constitution provides that any revision of the Constitution must be approved by a two-thirds majority of the National Assembly or a three-fifths majority of both chambers, failing which it must be submitted to a referendum.

Amendment of the Constitution is, however, subject to three limitations. *Firstly*, the republican form of government cannot be changed. *Secondly*, no amendment proposing the abolition of the Council of the Republic can be adopted unless such proposal has been approved by the Council itself or approved by a popular referendum. *Thirdly*, according to Article 94 of the New Constitution, in case of occupation of all or part of the metropolitan territory by foreign forces, no amendment proceedings may be initiated or carried out.

**The Fifth Republic.** The Fourth Republic which came into existence after the conclusion of the Second World War failed to restore stability to the government. The instability of the cabinet persisted and the French Empire abroad began to crumble. Indo-China threw off the yoke of France and the Algerian revolt assumed such a magnitude that the government of Metropolitan France found it impossible to tackle the problem. The necessity for a strong and more powerful executive was the cry of the day and accordingly General de Gaulle was elected Premier. The General accepted the office on condition that for six months he would be the supreme authority to restore stability and to frame a new constitution which would provide a basis for a stable and strong government. A new constitution was drafted and submitted to a referendum throughout the French Union. All parts of the French Union voted by an overwhelming majority for the General's proposed constitution with the sole exception of

French Guinea which, according to the General's liberal principle, was declared independent. The referendum took place on September 28, 1958 and the new constitution, superseding that of 1946, came into force on October, 1958.

The Constitution of the Fifth Republic consists of a Preamble and 92 articles. The preamble deals with the Rights of Man.

**President.** The most striking feature of the Fifth Republic is that the centre of political gravity has been shifted from Parliament to the President who has been vested with almost unlimited power. The President of the Republic is elected by an electoral college which consists of (i) the members of Parliament, (ii) the members of the general councils and of the assemblies of the overseas territories, and (iii) elected members of the municipal councils.

The Constitution has conferred upon him extensive powers—executive and legislative. The President is the guarantor of national independence. He sees that the constitution is respected. When the safety and honour of the state are threatened, the President is authorised to take such measures as are necessary to cope with the circumstances, after consultation with the Prime Minister, Presidents of the Assemblies and the Constitutional Council.

He nominates and dismisses the Prime Minister and other ministers. He can dissolve the National Assembly after consultation with the Prime Minister and the Presidents of the two Houses of legislature. He possesses considerable patronage at his disposal. All civil and military appointments are made by him.

The above review of the powers of the President of the New Republic shows that quite unlike the President of the Third and the Fourth Republics who neither reigned nor governed, the President of the Fifth Republic is the real head of the executive and master of the legislature.

**The Ministry.** All members are appointed by the President and may be removed from office by him. They must not be members of the legislature. A ministry will be forced to resign only if an absolute majority of members of the National Assembly pass a vote of no-confidence.

**The Legislature.** The legislature consists of two Houses, the Senate and the National Assembly. The Council of the Republic has been renamed 'Senate'.

The 'Economic Council' and the 'Constitutional Council' have been retained with slight modification.

So in the New Constitution of France, the President takes precedence over the Ministry and Parliament and the Ministry takes precedence over Parliament.

## SUMMARY

The Constitution of the Fourth Republic of France came into force in December, 1946.

### *Features of the Constitution*

It is unitary and parliamentary with a written and rigid constitution. It is republican in form and recognises the system of administrative law. The constitution embodies additional social, political and economic rights.

### *President*

He is the head of the state and is elected by the legislature for seven years and may be re-elected only once. He presides over the Council of Ministers, the High Council of the French Union, the Committee of National Defence and the Supreme Council of Justice and is the head of the armed forces. He can send messages to the National Assembly. He neither reigns nor governs.

### *The Cabinet*

The new constitution authorises the President to designate the President of the Council of Ministers at the beginning of each legislature but the choice of the President depends upon party position in the National Assembly. The size of the Council of Ministers is not fixed but is determined by the President in consultation with the Prime Minister. The Council of Ministers can assume office only after their policy and programme have been approved by an absolute majority of National Assembly by public vote. Ministers are collectively responsible to the National Assembly. The resignation of the Cabinet as a whole requires that a vote of censure or no-confidence must be passed by an absolute majority, in the National Assembly. The Council of Ministers may decide, in consultation with the President of Republic, to dissolve the National Assembly, provided two Cabinet-crises occur within 18 months. Ministers have access to both the chambers.

The French Cabinet, unlike the British Cabinet, is always a coalition cabinet and lacks the political homogeneity of the

British Cabinet and hence is notoriously unstable. The existence of too many parties, weakness in party organisation and the very limited power of the cabinet to dissolve the lower House has contributed to the instability of the French ministry. But a change of ministry in France does not produce so far-reaching consequences as is involved in a change of ministry in Great Britain.

### *The Legislature—Council of the Republic*

It is perhaps the weakest second chamber in the world. It consists of 320 members representing France and her overseas colonies and possessions. Members are elected by indirect universal suffrage. It is a permanent body, one-half members retiring each time when new election is held to fill up vacancies.

The new constitution provides that laws are passed only by the Lower House. It simply examines and gives its opinion upon measures referred to it by the National Assembly after a first reading. In all cases of difference of opinion, the National Assembly has the final decision.

### *National Assembly*

The Assembly first created in 1946 is the repository of real legislative powers in France. It consists of 627 members elected from party lists at a single ballot, with proportional representation by equal, direct and universal franchise.

It is the final authority to make all laws. The cabinet is responsible to the Assembly which can force a resignation by a simple vote of no-confidence. The cabinet however, can dissolve it under prescribed condition before the expiry of its term.

### *The Judiciary*

The judicial system in France is based on Code Napoleon which provides for two sets of courts—ordinary courts trying cases involving private citizens and administrative courts trying cases involving public officials.

The ordinary courts consists of (i) Courts of Justice of Peace which are the lowest courts trying petty cases, (ii) Courts of the First Instance having both original and appellate jurisdiction, (iii) Courts of Assizes for hearing appeals only and lastly, the final Court of appeal is the Court of Cassation. The administrative Courts consist of Regional Council and the Council of State which is the highest administrative Court.

### *Local Government*

France has a highly centralised system of Local Government. The units of local government are (1) Department with an elective council and a Prefect as the executive head who is an agent of the Central government. (2) Next comes the auton-

dissement with an elective council and a Sub-Prefect (3) The lowest unit is the Commune with both an elective council and an elective Mayor.

### *Political Party*

The highly individualistic temperament of the French people has led to the formation of too many party groups which in their turn have made the ministry in France proverbially weak and unstable. Important parties are the Communist Party, Socialist Party, M R P, etc

## QUESTIONS

1 Discuss the salient features of the New Constitution of France. In what respects do you consider it an improvement upon the old one?

2 What are the nature, Constitution and Functions of Administrative Courts in France? Discuss the advantages of, and objections to, these courts (C U 1952, Gauhati 1949)

3 Compare the Cabinet Government of France with that of England (C. U 1949)

4 Compare the position of the President of France with that of the United States of America (C U 1950)

5 How do you account for the frequent changes of Ministry in France? What are the effects of such changes on the country as a whole?

6 Discuss the composition and functions of the National Assembly of France

7 Give a brief outline of the system of local government in France

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## CHAPTER III

### GOVERNMENT OF THE UNITED STATES

#### *References*

Woodrow Wilson—The State

Munro—The Government of the United States (5th Ed.), Chs. VIII, IX, XIII, XVII—XIX, XXII, XXXV XXXVI

H Stannard—The Two Constitutions, A Comparative Study of British and American Constitutional Systems (1949).

**Introduction.** Two of the most powerful states of today upon which the attention of the whole world is riveted are the USA and the USSR, the political and economic ideologies of which are diametrically opposed to each other. The USA government deserves to be studied by students of Political Science mainly on two grounds. *Firstly*, it is here that an experiment of a government on a federal basis was made and when it became successful, the USA became a model to imitate. *Secondly*, it is an example of how heterogeneous race elements from all European countries with the British elements preponderating can unite to form a nation developing characteristics of their own adapted to their new environment.

The USA started its career as thirteen independent colonies which may be grouped into (a) Charter Colonies, (b) Proprietary Colonies and (c) Crown Colonies—the difference between the three being one of the degree of control exercised by the Home Government which was always anxious to curb the spirit of independence of the colonial people. The imposition of taxes and the enactment of repressive laws by the British Parliament in which the Americans were not represented raised a storm of protest from the colonial people who declared 'no taxation without representation'. The war of words changed into open conflict of arms which united together the thirteen colonies into a loose confederation in 1781. But the confederation was a war measure which failed

to bring the colonies into closer unity when peace was made with England in 1783. But the war with the Mother Country impressed upon the colonies the imperative necessity of a central government to maintain inter-state peace and order and to repel foreign aggression. Hence a new constitution was drawn up in 1787 by a convention which met at Philadelphia. The Constitution was finally adopted in 1789.

**Nature of the U.S.A. Constitution.** The adoption of the Constitution in 1789 by the thirteen colonies turned the confederation into a federal state with a national government at the centre having direct control over all citizens. The framers of the constitution preferred the federal model with a view to reconciling the centrifugal and centripetal tendencies. The federal model was conceived on such a broad basis that the national government and the state governments might not act at cross purposes. In drawing up the federal constitution, the framers of the constitution were guided by certain considerations based on their past experience as also the temperament of the people. *Firstly*, they wanted to make their government strong and at the same time efficient and the strength and efficiency of the government were secured by the creation of a strong executive, free from the control of the people as well as of the legislature. *Secondly*, the constitution is marked by a complete separation of powers of the executive, legislature and judiciary from one another with a view to making each department of the government independent of the other. *Thirdly*, the framers of the constitution, with a view to guaranteeing individual liberty, introduced a system of checks and balances in such a way that no department of the government could encroach upon individual liberty. *Lastly*, the fathers of the constitution ensured the sovereignty of the people by making all offices of the state elective and elections frequent. It is in this way that the constitution depends on the people.

The characteristics of a federal government as enumerated by Dr. Finer are all present in the constitution. According to Dr. Finer, a federal government as distinguished from a unitary one possesses the following features



(1) *The distribution of legislative powers* In a federal government the legislative powers are divided and distributed between the national government and the federating units. Broadly speaking, there are two different ways in which legislative powers are distributed. *Firstly*, the constitution defines the legislative powers of the federal authority, leaving the residuary powers to the component states. In the U.S.A., division of legislative powers is based on the above principle. The other method consists in defining the powers of the federating units, leaving the residuum of powers to the national government. Canada adopted the latter principle.

(2) *The distribution of administrative powers* As in legislation, so also in administration, powers are distributed between the national and the local governments. In the U.S.A., administrative and executive functions of general interest are vested in the President who executes federal laws while local affairs are administered by the state executives.

(3) *Representation of the states in the federal legislature* A federal government is the outcome of an agreement between a number of autonomous units and as such it is necessary that the component states must have equal representation in federal legislature in order to ensure equal voice in common affairs. In the U.S.A., this political equality of the component states has been secured by giving each state equal representation i.e., two representatives in the Senate irrespective of its size and population.

(4) *Special revenue arrangement* Special arrangements are made in the federal government to provide for revenue to both the central and local governments. In the U.S.A., the federal taxes are uniform throughout the country while local taxes vary according to the needs of the different states.

(5) *Special judicial arrangement* There are two sets of courts in a federation, the federal courts and the state courts. In the U.S.A., the federal judiciary, the Supreme Court and other subordinate federal courts, deal with matters as defined by the constitution while state courts deal with other matters. The federal judiciary in the U.S.A. is equal in status with

the executive and the legislature, all of which derive their powers from the constitution.

(6) *Stipulations relating to the form of state governments* The form of government which the component states should adopt is determined by the constitution. In the U.S.A., the constitution has prescribed the republican form of government for all states which are not competent to change it for any other form of government.

(7) *Specially difficult amending process* A federal constitution cannot be changed in the ordinary law-making process. The amendment of the constitution involves a round-about process so that it cannot be changed by an unilateral act of either national or the state legislatures. The U.S.A. constitution may be amended in the following way. Proposals for amendment are to be made either by two-thirds of the Congress or by a convention called at the request of two-thirds of the several states and such proposals are to be ratified by either three-fourths of the state legislatures or by conventions in three-fourths thereof.

(8) *Allegiance and Secession* A federal state is one state with a single sovereignty and as such the federating units composing the organic whole have no right of secession.

**Elements of the U.S.A. Constitution.** The Constitution of the U.S.A. consists of the following elements, namely, (a) the original documents, (b) the twenty-two amendments, (c) Statutes supplementing the original documents, (d) Executive decrees, (e) Judicial decisions interpreting the constitution and (f) customs and usages.

(a) *Original documents* The constitution which was originally drawn up at the Philadelphia Convention was a brief document which laid down only the framework of the constitution. The framers of the constitution were conscious of the fact that a living constitution must be capable of expansion in order that it may suit the changing requirements of the people. So they left room for its spontaneous growth.

(b) *Twenty-two formal amendments* The original constitution has been greatly modified by subsequent amendments which have changed the spirit of the constitution to a

great extent. The framers of the constitution prescribed such a difficult process of amendment that it is very difficult to make any drastic change in the constitution. In spite of the complex procedure of amendment which requires a two-thirds vote in the Congress to be ratified by three-fourths of the states, there have been up till now twenty-two amendments, the more important of which being the abolition of slavery, the provision in the constitution of fundamental rights, direct election of the Senators by popular vote, extension of suffrage to women and the like.

(c) *Statutes* As has been pointed out earlier, the fathers of the constitution created only the superstructure of the government, leaving the details to be worked out by the acts of the national and State legislatures. Thus the framers of the constitution made provision for a Supreme Court but the actual organisation of the Supreme Court was largely determined by statutes of the Congress. As a matter of fact, the original constitution of the U.S.A. has been largely supplemented by statutes passed from time to time by the Congress and various state legislatures.

(d) *Executive decrees* Bold and active Presidents like Jackson, Lincoln, Wilson and Roosevelt have also helped the growth of the constitution by their decrees and orders. It is said that Mr. Woodrow Wilson was President and Prime Minister combined. It was beyond the imagination of the founding Fathers of the constitution that legislative leadership would also pass on to the President. But successive Presidents used their powers in such a way as to make the office more powerful and more dignified.

(e) *Judicial decisions* Judicial review more than any other factor, is responsible for many of the drastic changes which have changed the spirit of the constitution. Judicial interpretation has conferred great powers both on the President and the Congress. It is in accordance with the doctrine of implied powers that the decisions of the Supreme Court have conferred upon the President the power to dismiss officers, to issue paper currency, to control radio and aeroplanes etc. But for this power of interpretation, many of the functions which are now exercised by the President and the Con-

gress would have swelled the list of state subjects. Thus judicial decisions have practically remade parts of the constitution.

(f) *Customs and usages* Last, though not the least in importance, is the part played by customs and usages in developing the constitution. The Cabinet illustrates the importance of custom in the growth of the U.S.A. constitution. The procedure adopted today in Presidential election is largely a product of custom. The framers of the constitution wanted to make Presidential election really indirect but by usage it has become really direct in substance though indirect in form.

**The characteristics of the American Constitution.** The constitution is a *federal* one in which residuary powers are vested in the component states. The National Government is vested only with a delegated authority. The second characteristic of the constitution is that it is not only a *written* but also a *rigid* one. Though mainly documentary in character, the constitution has been influenced greatly by customs and usages, and judicial and administrative decisions. It is rigid inasmuch as a special machinery and a special procedure are necessary for its amendment. *Thirdly*, the constitution is based upon the *theory of separation of powers*, the three organs of the government, viz., Executive, Legislature and Judiciary being independent of one another as far as possible. The framers of the constitution wanted to prevent the usurpation of powers by any single organ of the government and with that end in view, they introduced a number of checks and balances designed to secure the sovereignty of the people. Thus the Executive is balanced against the Legislature and the latter against the former. The Congress is limited by the veto powers of the President who, in his turn, is limited by the powers of the Senate. Other organs of the government are limited by the powers of the Judiciary which can interpret laws and declare void any action of any other department of the Government. The doctrine of *Judicial supremacy* is therefore another essential feature of the U.S.A. constitution. In England, the supremacy rests with Parliament but in America, it is the constitution which is supreme and the Supreme Court of Justice is vested with the power to interpret the constitution.

The constitution also guarantees individual liberty not only by the grant of fundamental rights contained in a 'bill of rights' but also by prohibitions and limitations on the powers of the Legislature. *Lastly*, it is an example of the *Presidential* type of government in which the Executive is independent of the Legislature and the Legislature is independent of the Executive.

**Recent Changes.** But it must be borne in mind that a change of circumstances has brought in a change in the spirit of the constitution. The enormous increase in the size of the territory as well as of the population of the country is one of the causes which partly accounts for this change. The framers of the constitution drew up the constitution to suit the requirements of their own time but with the change of time, new ideas and new political mechanisms have been added to the old. Thus the growth of the party system, which the fathers of the constitution could not anticipate, is acting as a connecting link between the Executive and the Legislature and has secured that co-operation between the two organs, absence of which would have impaired the efficiency of the government. The party system has also moulded the spirit of the constitution in another way. The election of the President, according to the constitution, was to be an indirect one but in practice, the election has come to be indirect only in form but direct in spirit inasmuch as the secondary voters are now pledged to vote for party candidates. Again the power and influence of the President have been allowed to increase more than what the constitution originally vested in him.

**The Federal Executive : The President.** The Executive authority is vested in the President of the United States of America. He is indirectly elected by the people for a term of four years during which he cannot be removed from office except by an impeachment. He must be at least 35 years of age, must be a natural-born citizen of the USA and must have lived in the country at least for a period of 14 years.

The President is elected indirectly by the Presidential Electors who, in turn, are elected by the ordinary voters. Each state elects a number of electors, equal to the number

of members from that state to the Congress. These electors then elect the President and the Vice-President. This indirect method was adopted by the framers of the constitution in order to keep the election free from direct popular control. But, as we have already seen, the intention of the framers of the constitution has been foiled owing to the growth of the party system. The convention of the constitution that the President should not be re-elected for more than one term was disregarded when President Roosevelt was elected for the third consecutive term in 1940. By an amendment of the constitution in 1951, the tenure of office of the President has been limited to two full terms.

**Powers and Functions of the President.** The President derives his powers from four sources, the most important of which is the constitution which clearly defines his powers and privileges. *Secondly*, judicial decisions have considerably modified the scope of presidential powers in cases where the provisions of the constitution are not explicit. *Thirdly*, the Congress has, from time to time, conferred authority upon the President by passing statutes. *Lastly*, customs and usages have also played their part in increasing the powers of the President.

*Executive and Administrative Powers.* As the Chief Executive of the Federal Republic, the President is enjoined by the constitution to see that all laws are faithfully executed. The President is thus authorised to make important appointments including those of the Secretaries, all ambassadors, ministers, consuls, judges of the Federal Courts and members of the various federal commissions. All these appointments are, of course, subject to the consent of the Senate. The President can also remove these officers, and though in this matter, the Senate has the power to refuse its assent, it seldom does so.

The President exercises enormous influence over the foreign and diplomatic affairs. He receives foreign ambassadors and with the approval of two-thirds of the Senate, can conclude treaties with other states. He is the head of the armed forces of the nation and in times of war he may assume the powers of a Commander-in-chief of the armed forces. He

cannot, however, declare any war without the concurrence of both the Houses of the Congress

*Judicial Powers* The President can also grant pardons and reprieves to all offenders against federal laws except those who have been impeached.

*Legislative Powers* The constitution has, however, vested little legislative power in him. As the constitution has made an elaborate provision for strict separation of powers, the President has little direct control over the Legislature. He cannot summon, prorogue or dissolve any of the Houses of Legislature, though he has the power to convoke a special session of the Legislature. He cannot personally attend the sessions of the Legislature nor can he initiate bills. He cannot be removed from office by the Legislature. But, indirectly, the President exercises a large control over legislation and as a matter of fact, the President has now become the virtual leader of the Legislature. The President is required by the constitution to send messages to the Congress from time to time. These presidential messages contain advice and recommendations regarding the future policy of legislation and administration to be pursued by the Legislature. The party system also acts as a connecting link between the President and the Congress. The President who is now elected on party lines happens to be a leader of the party-in-power and as such he has considerable following in both the Houses of the Congress. He may not personally introduce a bill in the Legislature, but he can draft the whole of a bill on his own initiative and ask or may even threaten a member, on penalty of losing his seat at the time of the next election to introduce it in the Legislature. The President also possesses limited veto power. But if the vetoed bill is passed again by a two-thirds' majority of the Congress it becomes an act immediately without requiring his assent. If a bill passed by the Congress is not assented to by the President within ten days and if he does not return it back to the Legislature within the stipulated period, the bill becomes an act without his signature. The practice of determining many matters by means of executive decrees has also conferred considerable legislative powers upon the President.

and his subordinates. The President also keeps himself in touch with the Press which is granted two weekly audiences by him. It is through these press conferences that he takes the lead in legislative policies, sets the people against the Congress and wins the confidence of the people. The foregoing review of the legislative powers of the American President amply illustrates the truth of Munio's remark on the powers of the U.S.A. President "To say that the U.S.A. President is an executive officer and has nothing to do with law-making is to talk philosophy, not facts. Mr. Woodrow Wilson was President and Prime Minister combined."

**Position of the President.** The American President is thus regarded by many as the most conspicuous among the living political functionaries of the world. The British Prime Minister is virtually the political leader and ruler of England but he is directly responsible to the Lower House of the Legislature,—he is supreme only so long as he is backed by a Parliamentary majority. The American President appears to have two advantages which make him more powerful than the British Prime Minister. The President has a fixed term of office and he has a constitutional right to hold on to that office until the expiration of his term. But the Prime Minister has no fixity of his tenure. He may have to resign earlier or to hold a fresh election whenever the House demands it. *Secondly*, the President, in contrast to the Prime Minister, is completely independent of his Cabinet and may act against its unanimous opinion but the British Prime Minister must take into consideration the views of his Cabinet colleagues whose political status is superior to that of the U.S.A. Cabinet Secretaries, and with whom the British Prime Minister must share his power. The German President was the nominee of the nation, but he was subject to re-call. The French President neither reigns, nor governs. But the American President is an example of an independent type of Executive, having no parallel in any other country. He is the nominee of the nation, yet the nation cannot control him. Unlike the British Premier, he is not an agent of the Legislature but



exercises his authority in his own right, free from the control of either the people or the Legislature. 'He may misgovern the country or govern it indifferently, but the President has a constitutional right to his office until the legal expiration of his term' Only if the conduct of the President becomes criminal, *i.e.*, only in cases of treason and bribery, he can be accused by the House of Representatives and impeached by the Senate with the Chief Justice of the Supreme Court as the President, and a two-thirds' vote is necessary to convict him. The American President represents, on the one hand, the dignity and majesty of the British Crown and the power and influence of the British Prime Minister, on the other. Thus it has been aptly said, "The President is the nearest and the dearest substitute for a royal ideal which the American possesses"

**American President and British Prime Minister.** The only office with which the office of the USA Presidency stands a comparison is that of the British Prime Minister. Both of them wield enormous powers and both of them are in a position to make or mar the future of their countries. But in spite of the fact that both of them possess almost the same range of powers and influence, nevertheless, the contrast between them is no less striking than comparison.

*Firstly*, the two offices differ in respect to their mode of appointment. The USA Presidency is the result of a double process of election. He is the choice of middlemen voters who are elected by the primary voters. The British Prime Minister is of course elected by the primary voters as a member of the House of Commons and it is his leadership of the majority party in Parliament which installs him to the office of the Prime Minister. So the British Prime Minister may also be said to be the result of a double process of election though the method differs from that of the USA.

*Secondly*, in the USA, the President is looked upon both a substitute for the royal ideal and Prime Minister. The President is not only the titular head but also the real head of the executive but in England, the King is the titular head of the executive.

He represents the state on all ceremonial occasions. All powers belong to the monarchy. The Prime Minister is formally appointed by the King and acts as his chief adviser. But actually the Prime Minister exercises all the powers vested in monarchy. *king reigns but does not govern*

*Thirdly*, the two offices differ in respect to their relation with the legislature. The USA President is independent of the legislature and the legislature is also independent of the executive. The President, not being a member of the legislature, cannot directly influence legislation, although indirectly, he can influence legislation through messages, through his veto power etc. He cannot summon ordinary session of the legislature nor can he dissolve it. Although the legislature in the USA can control presidential actions in the matter of making foreign treaties, or making appointments, or war and peace, but it cannot remove him from office. But in Britain, the Prime Minister's influence over the legislature and legislation is not only direct but also far more effective in the sense that he is the leader of the majority party in Parliament, and legislation, ordinary or financial, must receive his approval. The British Prime Minister guides the legislature which can also be dissolved at his instance.

*Fourthly*, the position of the USA President is more secure in the sense that he enjoys a term of office fixed by the constitution and during this term, he cannot be removed from office either by the legislature, or by the people except by the cumbersome procedure of impeachment. He may misgovern the country or may govern it according to his free will but he has a constitutional right to govern. But the British Prime Minister is not so free in this respect because unlike his counterpart in the USA, he does not derive his powers from the constitution but from his position as the leader of the majority party. He is powerful only so long as he is backed by a parliamentary majority. In case he loses the confidence of the House, he is either to resign or to dissolve the House and place the issue before the nation. Thus while the USA President is independent of both the legislature and the electorate, the British Prime

Minister must always feel not only the pulse of the House but also of the electorate.

*Lastly*, the USA President is completely independent of his Cabinet which is in all respects subordinate to him. But the British Prime Minister, although he possesses rank and precedence over his other Cabinet colleagues, is only an equal among equals. He cannot completely flout or ignore their views. This is evident from the fact that decision in the USA Cabinet is always the decision of the President—ten yeas and one no—the no is always to prevail but in Britain, the decision is of the whole Cabinet always arrived at by the majority. The Prime Minister may persuade, may threaten but cannot over-ride.

**The Cabinet.** The executive work of the government is carried on by ten departments, the heads of which are collectively known as the Cabinet. The constitution nowhere makes provision for the creation of a Cabinet and in this respect the American Cabinet resembles the British Cabinet inasmuch as both of them are extra-legal growths. The constitutional status of a Cabinet member is that of a Secretary of a Government Department with more or less consultative and advisory duties. He is appointed by the President, subject to the approval of the Senate and is individually responsible to the President. The ministers are not members of the Legislature, cannot initiate bills and are in no way responsible to the Legislature. They, unlike the British Cabinet ministers, are not leaders of Parliament. The ministers are not the colleagues of the President but his subordinates who are guided by his instructions in all matters relating to their own departments. In these respects, the American Cabinet differs from the British Cabinet. The USA Cabinet does not possess the unity and solidarity in the English sense although the President holds the balance between the different departments of the government.

**British Cabinet vs. U.S.A. Cabinet.** In spite of some superficial resemblances between the British and USA Cabinets the Cabinet in the USA hardly corresponds to the classic sense in which it is understood elsewhere. The re-

semblances which are more appaarent than real may be enumerated as follows

*Firstly*, in both the countries, the Cabinet is an extra-legal growth. Both of them exist by custom and have no constitutional existence.

*Secondly*, the British Cabinet consists of the leaders of the same political party, the party having a majority in Parliament, in the U.S.A., Cabinet members are recruited from among the party of the President, i.e., from the supporters of the President.

*Thirdly*, as in Britain so in the U.S.A., members in charge of the important departments of the government constitute the Cabinet.

*Fourthly*, in Great Britain the Crown formally appoints the members of the Cabinet including the Prime Minister. Likewise in the U.S.A., the President, who is the head of the state, appoints all Cabinet members.

*Lastly*, although in Britain all Cabinet members are equal in rank and status and the Prime Minister is an equal among equals, nevertheless Prime Minister's leadership, rank and precedence over his colleagues are established facts. In the U.S.A., not only in rank and precedence, but in all respects, President's superiority over Cabinet members have been definitely established by the constitution. But the resemblances end here and the differences which are more marked and more fundamental begin.

*Firstly*, the members of the British Cabinet must be members of either House of Parliament and in their capacity as legislators, they take prominent parts in all sorts of law-making and as a matter of fact, they guide the course of legislation in Parliament. In sharp contrast to the British Cabinet System, the members of the U.S.A. Cabinet are forbidden by law to be members of the Congress and as such they cannot play a dual role of administration and legislation. They are administrative heads only having nothing to do with legislation.

*Secondly*, Cabinet members in Britain are responsible to Parliament, especially, to the House of Commons which theo-

etically still possesses the power to drive away a Ministry by a vote of no-confidence. But in the U.S.A. Cabinet members are responsible no doubt but their responsibility is solely to the President and not to the Congress which cannot drive them from office

Thirdly, the distinguishing mark of the British Cabinet is its unity and solidarity which may be regarded as the very life breath of the Cabinet system in Britain. Ministers sail in the same boat they float or sink together. The U.S.A. system, on the other hand, is marked by the complete absence of this collective responsibility of the Cabinet members who are individually responsible to the President alone

Fourthly, decisions in the British Cabinet are usually taken by a majority of votes. The Prime Minister can persuade but cannot override the decision of the majority. The practice is different in the U.S.A. where the President may consult his Cabinet members but the decisions are his only. He can not only persuade but can override their decisions

Fifthly, the British Prime Minister is no more than an esteemed leader of his Cabinet *colleagues* who are all equal in status but in the U.S.A., the President is a superior who can dictate to other Cabinet members who are only his *subordinates*

Lastly, it is apparent from the above discussion that Cabinet members in Britain constitute the real ruling body whereas in the U.S.A., the Cabinet is only an advisory body, the real power being vested in the President alone

### **Administrative Departments.**

The U.S.A. constitution does not contain any elaborate provision regarding the structure of administration. The constitution simply provides that the President may require the help of officers for the due discharge of the duties of the executive departments and with this object in view authorises the Congress to confer powers upon the President to appoint inferior officers in the executive departments. The first department, viz. the department of foreign affairs, later on split up into state, war and treasury was created as early as 1789 and exactly hundred years after, the departments

were increased to eight. Today, the administrative work of the government is run by ten departments, twenty government corporations and more than fifty independent agencies.

The oldest and the most widely known department is the Department of State which in fact is a combination of two departments, namely, the Home Department and the Department of Foreign Affairs. The head of the Department is known as Secretary of State. Next in importance is the department of Treasury under a Secretary of Treasury corresponding to the Chancellor of the Exchequer in Great Britain. Then come the departments of Post-office, of the Interior, of Justice, of Agriculture, of Labour, of Commerce, and last, though not the least in importance, the Department of National Defence which functions under a civilian defence Secretary who supervises the work of the armed forces of the nation.

**The Congress.** The legislative authority in the USA is vested in the Congress, consisting of two Houses: the Senate and the House of Representatives. The former represents the component states, the latter the people. Thus the two Houses together make a happy compromise between the centrifugal and the centripetal forces, reconciling local autonomy with national unity.

The Congress, unlike the British Parliament, is a *non-sovereign law-making body*. The British Parliament can make, amend or rescind any law of the land, ordinary or constitutional. There is no Court in England which can question the validity of an act passed by Parliament. But in the USA, the federal legislature, i.e., the Congress is doubly restricted. It derives its powers from the constitution and it cannot go beyond the limits set by the constitution. *Secondly*, the Congress is limited by the powers of the Supreme Court which can declare an act of the Congress null and void if it is at variance with any provisions of the constitution. The Congress cannot also amend the constitution. The power of the Congress is also limited by the existence of so many state-legislatures which possess independent law-making powers derived from the constitution and hence cannot be interfered with by the Congress.

**The Senate.** The Senate is the Upper House in the USA. It is composed of 98 members, each state sending two representatives on the basis of equal representation, irrespective of size and population. A Senator must be at least 30 years of age and a citizen of the USA at least for 9 years. Senators are elected for a term of 6 years, one-third of them retiring every two years. Formerly, they used to be elected by the Legislatures of the states which they represented, but now they are elected by popular votes and are free to vote as they please. The Vice-President, who is elected along with the President, presides over the sessions of the Senate and has a casting vote in case of a tie. The Senate transacts its business mainly through the numerous committees into which it is dissolved at the beginning of each Congress. The most important of these committees are those of foreign relations, finance, inter-state commerce, etc. The Committee on foreign relations examines all treaties before they are placed before the Senate and thus exerts a considerable influence over the foreign policy of the government.

**Powers and Functions of the Senate.** Excepting as regards money bills, the Senate possesses equal legislative powers with the House of Representatives. No bill can become a law without its assent and in case of disagreement between the two, a compromise is effected through the agency of a conference committee, composed of three members from each House. Unlike Second Chambers in other countries, the Senate of the USA does not play the role of a mere debating and ventilating chamber, but plays an equally important part in the matter of initiation of new bills. Many an important law in the USA has been initiated by the Senate. True it is that the Senate cannot initiate money bills, but it can amend them. Its amending power is so wide that it can insert new proposals by striking out everything from a money bill excepting its title. Thus its power to amend money bills is almost tantamount to origination of new money bills.

The constitution has also conferred many executive powers on the Senate so that it may act as a check up on the monarchical ambition of the President. This function, the Senate may be said to have faithfully discharged. The consti-

tution requires that all appointments made by the President are subject to ratification by the Senate. The Senate therefore possesses the power to confirm or reject appointments made by the President. It has also the power to ratify or reject treaties made by the President. The President is not bound by law to consult the Senate in the matter of negotiating treaties with a foreign power, but he will do well in taking the Senate into his confidence beforehand, if he really desires them to be formally accepted by the Senate. This diplomatic power of the American Senate is an effective check up on the arbitrary exercise of power by the President. The refusal by the Senate to ratify the Versailles Peace Treaties and the Covenant of the League of Nations duly honoured by President Wilson, will serve as a warning to all future Presidents.

The Senate also performs some judicial functions. It acts as a court to try all impeachments brought by the Lower House.

**Miscellaneous Powers.** The Senate possesses certain other powers which it exercises by custom. In case of any malpractice or delinquency in the work of the government, the Senate can cause an investigation of such malpractice or delinquency by its own committee which can examine witnesses and call for necessary records for conducting such investigation. The Senate has the right to propose an amendment of the constitution by a two-thirds vote and has the right to admit newly formed states to membership of the USA. Lastly, if in the election of the Vice-President, none of the candidates secures an absolute majority of votes, the Senate can elect one of the two candidates as Vice-President who has secured a relative majority of votes.

**Importance of the Senate.** The foregoing review of the powers of the American Senate will justify Bryce's remark that the American Senate is the most powerful Second Chamber in the world. The Senate is the only Second Chamber which can amend money bills, control the Executive and ratify treaties. But apart from these special powers enjoyed by the Senate, there are other causes which have contributed to its unique position and importance.



The Senate is a small body consisting of only 98 members and its small size has greatly contributed to its efficiency as a deliberative body. Again, the members of the Senate are elected for a term of six years while those of the Lower House are elected for two years only. The longer duration of the Senate and its quasi-permanent character attract superior types of public men as its members who can easily impress their views upon the members of the Lower House. The members of the Lower House consider it a promotion to become Senators. Besides, due to their short tenure of office, they cannot follow up any programme of work and hence, they allow themselves to be guided by their elder statesmen. Equality of representation of the states has also contributed to the strength and dignity of the Senate. Furthermore, the system of popular election of the Senators has made them free from the obligations of the state Legislatures which used to elect them formerly. Now Senators can vote freely according to their own conscience and can look upon all problems of the state from the broad national point of view.

Another factor which has contributed to the power and prestige of the Senate is the united effort made by the Senate to protect its high tradition. Even the feeblest attempt made by a President to interfere with its activities has always raised a storm of protest from all Senators irrespective of their party affiliations.

**The House of Representatives.** This is the Lower House which consists of 435 members elected for a term of two years. Representatives must be at least 25 years of age and a citizen of the USA at least for 7 years. They are elected by the voters of each state in proportion to the population of the state as determined by the last Federal Census. All citizens of the age of 21 years have the right to vote. Owing to an increase of population, the original principle of one representative for every 20,000 of the population had to be abandoned. Now there is one representative for every 318,000 people. The House is presided over by the Speaker who is elected by all the Representatives. Unlike his counterpart in England, the American Speaker is a party man and does not shun his party.

colour even after his election. His functions are almost the same as those of the Speaker of the British House of Commons. In addition to his duties as the presiding officer of the Lower House, the American Speaker also acts as the Legislative leader of the majority party.

The House has about 60 committees. In the Congress, bills are first referred to one of the appropriate committees before they are presented to the whole House for discussion. In England, bills are referred to the committees after the second reading is over and their principles approved by the House. In America, legislative leadership belongs to the chairmen of the committees, while in England, leadership belongs to the Executive.

The House of Representatives possesses equal legislative powers with the Senate. But it has the sole right to initiate money bills. It cannot, however, control the Executive except indirectly through its control over the purse. The House is, however, more free from executive interference in the matter of its legislative activity.

### **British House of Commons vs. U.S.A. House of Representatives.**

The United Kingdom and the United States of America claim to be the foremost among the democratically governed countries of the world. The true test of a democratic government lies in the extent to which the people or their chosen representatives can exercise effective control over the affairs of the state and the extent of this popular control is largely determined by the organisation and functions of the legislature, more especially of the Lower House.

The House of Representatives in the USA is the child of the House of Commons in Great Britain but the difference in environment has moulded the character of both in different ways. The House of Commons is the more numerous body consisting of about 635 members while the House of Representatives is a much smaller body with a numerical strength of 435 members. A representative must not be less than 25 years of age and a citizen of the USA for at least 7 years and must also be an inhabitant of the state from which he

seeks election. By custom it is now fixed that he must also be a resident of the constituency from which he is returned. In England, a member of the House of Commons must not be less than 21 years of age and have resided in a constituency for at least three months. In both the countries, members are directly elected by the people on the basis of universal adult suffrage. But so far as the representation of the people in the two countries is concerned, it should be noted that the British House of Commons is far more representative in character than its child—the House of Representatives. In England there is, roughly speaking, one representative for every 70,000 of population while in the USA, there is at present one representative for every 318,000 people. So the English people are at least four times better represented than the Americans.

The contrast between the two legislative bodies is more marked in respect to their duration of office. The House of Commons is elected for five years though it may be earlier dissolved while the American representatives are elected for a term of two years only. This shorter duration of the American House has not been without its effects upon its power and prestige. The House of Commons is summoned by the King but the representatives meet on dates fixed by the constitution.

The two legislative bodies differ also with regard to their organisation and functions. Both of them elect their Speakers who are to conduct the business of the two Houses. The English Speaker shuns all party colour after election. All the debates are addressed to him whose main duty consists not so much in speaking as in listening to the weary speeches made by other members. The American Speaker, on the other hand, is always a party man who sometimes becomes a more aggressive partisan in the debates of the House. The House of Representatives is a more animated body always doing its business at break-neck speed with almost full attendance of its members, all of whom take a lively interest in the work of the House. The House of Commons makes a poorer show in this respect. The attendance is thin and few members take wholehearted interest in the proceedings of the House. This

comparative lack of interest on the part of the members of the House of Commons is due to the fact that ordinary members have little to do either with legislation or with the formulation of policies. The Cabinet system of government in England provides the House of Commons with a band of executive leaders who guide and virtually dominate the work of the House. But in the USA, legislative leadership belongs neither to the President nor to the Cabinet members. The House is free to have its own way in all matters.

Another difference between the two is that the Standing Committees of the House of Representatives are much more numerous than those of the House of Commons but the numerical strength of each of the committees excepting the Finance Committee is smaller. In the USA, chairman of each of these committees is elected when the committee is formed and invariably chairmanship goes to the senior most member of the majority party. But in England, personal ability and capacity to preside count more than seniority in the matter of election of the chairman. In England, there is a clear-cut distinction between public and private bills but no such distinction is made in the USA. In England, bills are sent to the committees after their second reading when the House has approved the general principle of the bill. So the committees cannot make any substantial change in the bill. In the USA, on the other hand, all bills are referred to committees before there is any discussion on their principles or general merits. The system gives the committees wider powers in overhauling a bill and even changing its substance.

But the most striking difference between the two lies in their respective powers. The House of Commons theoretically still possesses deliberative, legislative, and financial powers and above all, the great source of its strength lies in its control over the executive. But the House of Representatives completely lacks the power of the House of Commons, namely, its control over the executive. The House of Representatives has practically no control over the executive whose treaty-making power and power to make important appointments are subject to the approval of the Senate. On financial matters also, the House has been given co-equal powers with the

Senate So the Senate possesses greater power and prestige than the House of Representatives. The framers of the constitution wanted to make the Senate the real centre of political gravity so that it may effectively control both the President and the House of Representatives. Hence the House of Representatives is no doubt a representative assembly of the people but real powers have not been concentrated in it. The House of Commons is not only a representative body but it is the visible centre of the English political system. MUNRO has summed up the difference between the two Houses in the following way "The one is characteristically English while the other is just as characteristically American"

**Legislative Procedure.** Any member of either House of the Congress may introduce any bill, save that money bills must originate in the House of Representatives. In the Congress, unlike in Parliament, no distinction is made between public bills and private bills. All bills are public and introduced by private members. Bills may be inspired by the President or by members of the Cabinet but they are never introduced by a member of the executive. In the U.S.A., important bills are however laid before the Congress by the chairman of the committee to which such bills are generally referred and they are designated by the chairman's name, such as, the Sherman Law, the Rogers Law, and the like. Thus in the Congress the chairman of the committees play the same important role in legislation which, in England, the members of the Ministry do.

After its first formal reading a bill is referred to one of the relevant committees for report. In contrast to the practice in British Parliament where a bill is referred to a committee after the second reading when the general principles of the bill have been discussed by the House, in the Congress, a bill goes to a committee after the first reading and it is in the committee stage that the bill is not only discussed but its substance may be changed by the committee. The committee, after examining and amending the bill, reports to the House. After report by the committee, the bill is put on one of the five calendars dealing with all sorts of bills. Then the second reading begins and it is at this stage that the procedure be-

comes lively and interesting. Members may move amendments and argue for or against the bill. Then comes the third reading which is more or less a formal affair. After the third reading is over, the bill is put to vote by the Speaker. The House may adopt any of the three following methods of voting which decides the fate of the bill. *Firstly*, voting takes place by the 'sound of voices' when the other two methods are not demanded. *Secondly*, votes are taken by tellers appointed by the Speaker. *Lastly*, on the requisition of one-fifth of the members present, voting may take place by 'yeas and nays' which involve actual roll call. This system entails waste of time and is generally adopted by the minority as a tactics for putting obstruction.

**American Financial Legislation.** American budgetary procedure is regulated by the Budget and Accounting Act of 1921. According to this Act, the estimates of expenditure are compiled by the director of the budget at Washington from figures received by him from all departments. The director prepares a co-ordinated budget from these estimates and transmits this to the President on whose sole responsibility, the budget is laid before the Congress. Thus both in England and the U.S.A., the executive takes the initiative in presenting the legislature a general fiscal plan for expenditure. The House of Representatives, before which it is placed first, refers the estimates to a committee on appropriations. The committee may recommend changes in the estimates, either up or down. From the committee, it goes back to the whole House which, unlike the House of Commons, possesses wide powers both by law and custom to make any alteration in the estimates at will. After it has been passed by the House, the estimates go to the Senate which, in contrast to the House of Lords in Britain, may make such changes in the estimates as it likes. So when the appropriation bills finally come out as an enacted measure, it differs essentially from its original form in which it was first introduced by the executive and as such it is difficult to fix the responsibility of the final form of the estimates.

In the U.S.A., proposals for raising revenues are initiated by the Secretary of the Treasury through the President,

though there is no bar on the part of any member of the House to bring such proposals on his own initiative. A revenue proposal brought forward either by the executive or by a member of the House is handled by a committee different from that which considers the appropriation bills. The two committees which consider the revenue and appropriation bills in England, though distinct in name, are identical in personnel and hence a co-ordinated policy is maintained. But in the Congress, the two committees dealing respectively with appropriation and revenue are entirely different and function under different chairmen who of course confer a good deal. Under this system, a well-balanced budget is impossible and responsibility in budget-making is divided. Although Congressmen in the U.S.A. are better informed of, and exercise a greater control over financial matters than members of Parliament, nevertheless the American system is imperfect in view of the fact that the executive, in contrast to the Chancellor of the Exchequer, gets no opportunity to defend his financial policy embodied in the financial proposals made by him, except through messages, conference or other indirect methods. Besides, in England, the responsibility in budget-making is centralised while in the U.S.A., responsibility is divided.

**British vs. American Committee System.** It has been the normal tendency of legislatures of modern states to refer bills to small committees with a view to ensuring proper deliberation and a detailed examination of the measure. For this purpose, every legislative body forms small committees at the beginning of the session and the committees report to the whole House their opinion about the bill either with or without amendment. Both in England and in the U.S.A., this procedure is a normal feature of law-making. Though fundamentally the procedure is alike, there are sharp contrasts between the two.

*Firstly*, there is a distinction in the manner in which committees are formed in the two countries. In England, the various committees in the House of Commons are selected by a 'Committee of Selection', composed of members representing each party according to its numerical strength but in the

U.S.A., the party caucuses select a committee which in its turn selects the members from each party who are to serve on the various committees

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*Thirdly*, in the British Parliament a distinction is made between public bills and private bills and there are different committees for the examination of public and private bills. The procedure with regard to private bills legislation is different from that of public bills legislation. In the U.S.A., no such distinction is made and all bills whether public or private in their scope go to regular committees.

*Lastly*, in England, legislative leadership belongs to the executive, i.e., to the Cabinet members while in America, leadership belongs to the chairman of the committees. The chairmen of committees in the House of Commons are absolutely neutral and do not get the prominence which the chairmen of American committees get. Important bills in the U.S.A. are named after the chairmen of committees.

### **The President in relation to the Congress and the system of checks and balances.**

The government of the U.S.A. being essentially of the presidential type, there is a clear-cut separation of powers between the executive and the legislature. The executive, i.e., the President is independent of the legislature and the legislature is independent of the executive. This is evident from the constitutional provisions that the President is indirectly elected by the people for a four years term within which he cannot be removed by the legislature. The President is not a member of the Congress and cannot directly influence legislation. The Congress is also independent of the President inasmuch as it assembles on dates fixed by the constitution. It cannot be dissolved by the President.



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But behind this distinct separation of powers, the men who drafted the constitution apprehended that concentration of power in each department might lead to arbitrary exercise of authority resulting in tyranny. They therefore introduced a system of mutual *checks and balances* with a view to making power a check upon power. In order to prevent usurpation of power by one single department, the system was designed to distribute powers in such a way that each of the executive, legislative and judicial powers is shared by other departments. Thus although the President is independent of the Congress, he is required to take the concurrence of the two Houses of the Congress in declaring war. In the same way, the President's power to make appointments and to make treaties is shared by the Senate. The President also shares with the Congress the power to make laws through his messages, to approve bills passed by the Congress and to issue ordinances or proclamations. He can also convoke special sessions of the legislature. Thus the executive is balanced against the legislature and the legislature is balanced against the executive.

Again the President enjoys the power to grant pardons. The upper House of the legislature, i.e., the Senate exercises some judicial functions when it is constituted as a court of impeachment against the President and other high civil officers. The judges of the Supreme Court are appointed by the President subject to the approval of the Senate but the court can nullify acts passed by the Congress. Lastly, proposals for amendment of the constitution by two-thirds of the Congress are subject to ratification by three-fourths of the state legislatures but state laws which conflict with national laws or treaties may be declared unconstitutional by the Supreme Court.

**The Federal Judiciary—The Supreme Court.** The constitution lays down that the "Judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time, ordain and establish." The Federal Courts consist of a Supreme Court, 9 Circuit Courts of Appeal and 81 District Courts. The Supreme Court consists of nine judges who are

appointed by the President, subject to confirmation by the Senate. They hold office during good behaviour and cannot be removed except by impeachment. The Supreme Court has an appellate as well as an original jurisdiction and the presence of six judges is required to give any decision. The original jurisdiction of the Supreme Court extends to cases involving ambassadors or other public ministers and those to which a state is a party. In its appellate jurisdiction, it hears appeals from the Federal courts and State courts.

The Supreme Court plays an important role in the government of the country, unparalleled in the history of any other country. In England, the courts are bound to apply laws passed by Parliament which is a sovereign law-making body. The English courts can interpret laws but cannot question their validity. In the United States, the Judiciary is supreme. It can not only interpret laws but can declare the laws unconstitutional, if they are inconsistent with the constitution. The Supreme Court does not revise the laws but it simply interprets the constitution only to see whether the laws brought up before it for adjudication conform to the constitution or not. If they do not conform, they are declared invalid. Thus some provisions of President Roosevelt's New Deal legislation were declared invalid by the Supreme Court. The Federal Judiciary acts as the final arbiter of all disputes in connection with the constitution. The USA Government is essentially a system of checks and balances. The Supreme Court is the authority which maintains the checks and balances provided in the constitution by preventing both the Legislature and the Executive from encroaching upon the rights of the citizens. Thus the rights of the citizens, the rights of the states and the rights of Federal government are protected by the Supreme Court by virtue of its power to interpret laws brought up before it for adjudication. The power of the Judiciary to interpret the laws has also modified the rigidity of the constitution. The Supreme Court by propounding the doctrine of implied powers which is imperceptibly pervading the decisions of Supreme Courts in almost all federations has filled up a gap in the demarcation of powers in the USA. Thus judicial interpretation in accordance with the doctrine of implied

powers has largely increased the powers of the national government. But for this power of interpretation, many of the functions which are now exercised by the President and the Congress would have swelled the list of state functions. It is in this way that the decisions of the Supreme Court have conferred upon the President the power to dismiss officers, to issue paper currency, to control radio and aeroplanes etc. The function of the Supreme Court has been described by a writer in the following way "It maintains its judicial poise while other departments of the Government are swayed by fluctuating gusts of popular opinion. Its duty, at all times and in all circumstances, is to uphold the constitution as the supreme law of the land, and the exercise of this power is essential to the welfare of all the people." Judicial decision can mould the constitution according to the changing needs of the country. The Federal Judiciary, therefore, possesses a competence not possessed by the Judiciary in England or in any other country.

This extra-ordinary power of the federal judiciary has placed it on the status of a super-legislature which can allow a law either to stand or disallow it altogether. The inevitable result of this system has been that the position of the Congress has been considerably weakened and it often makes laws to please the voters knowing full well that its laws will be declared invalid by the Supreme Court. If the judges are not impartial, the judges, in making their decisions, may be guided by political considerations favouring one party to the detriment of the other. Various suggestions have been made from time to time to curtail the power of judicial review. It has been suggested that an act of the Congress which, if declared *ultra vires* by the Supreme Court, is passed by the Congress for the second time, should not again be subject to judicial review. Another proposal is that the power of judicial review in order to be effective must require the concurrence of at least seven out of nine judges instead of the present practice of making decisions by a simple majority. It is for this reason that the Late President Roosevelt made an attempt to reorganise the Supreme Court but his attempt did not succeed.

## **Amendment of the Constitution.**

The American Constitution is typically rigid and the sole test of the rigidity of the constitution lies in its specially difficult amending process.

The process of amendment of the USA Constitution falls into two parts, viz., (a) proposal for amendment and (b) its ratification. The proposal for amendment is made by one body but amended by a different body. An amendment to the constitution may be proposed either (i) by the Congress by a two-thirds majority or (ii) by a special convention called by the Congress at the request of two-thirds of the states. Such proposals thus initiated in order to be valid require ratification either by (i) three-fourths of the state legislatures or (ii) by conventions in three-fourths of the states. Thus there are altogether four methods, two for making proposals and two for ratification of such proposals. But most of the formal amendments of the constitution have been proposed by the Congress and ratified by the state legislatures by the required majority. This cumbersome procedure has made it difficult to change the constitution when such need arises. Any thirteen states may combine and can effectively oppose much needed amendments though supported by thirty-five states. Moreover, state legislatures or special conventions called for ratification often adopt dilatory tactics in ratifying the proposals unless the Congress specifically prescribes a time-limit for such ratification.

But it should be remembered here that formal procedure is not the only method of amending the American constitution. There are other informal methods as well. The Constitution has been more often amended by informal methods such as the growth of conventions and judicial interpretation according to the 'doctrine of implied powers' than by formal method.

**Position of the States in the Union.** The USA is a federation of 49 states, each of which has a republican form of government. Each state has an elective Governor, a Bi-cameral Legislature and a State Judiciary. The recognition of the principle of separation of powers is discernible in the organisation of the state governments as well.

**Rights and Obligations of the States.** The states have been left almost free to make their own constitutions. As members of the Federal Union, they can claim the right to protection from foreign aggression and also to security from internal revolution. They have the right to admit persons to their citizenship at times or on conditions wholly different from those laid down by other states. They have also the right to maintain a system of local government and a system of state and local taxation within their respective jurisdictions. Another important right consists in the power to participate in the amendment of the national constitution.

The limitations on the power of the state governments are *firstly*, that they cannot change their republican form of government. *Secondly*, they cannot exercise those powers which have been expressly conferred on the federal government or those denied to them by the constitution. *Finally*, they cannot secede from the union. Speaking on the limitations on the powers of State governments Bryce says "In the partitionment of governmental functions between nation and state, the state gets the most but the nation the highest so the balance between the two is preserved."

**Political Parties in the U.S.A.** There are two major parties in the USA which can be distinguished from each other more by their organisation than by the difference in their policy or principle.

1. *The Democratic Party* Of the leading political parties in different countries in the world, the Democratic Party in the USA holds a unique position inasmuch as it had been in power without any break for about twenty years and hence all credit, if any, must go to this party because it piloted the ship of the state through troublous times like the Great Depression, Second World War and post-War Reconstruction. The leadership which now the USA possesses in international politics is solely due to the policy and programme of this party.

The party is dominated by agricultural and labour interest and it has its stronghold in the southern states. The party had a majority in both the Houses of the Congress. The leader is ex-President Harry S. Truman under whose able

leadership, the government of the U.S.A. extended its full co-operation and financial aid to other democracies under Marshall Plan. In foreign policy, it is definitely anti-Soviet and has formed the Western Bloc with a view to checking the growing influence of the U.S.S.R. True to the principles of its late leader President Roosevelt, the party supports the United Nations. In domestic affairs, the main programme of the party consists in promoting the welfare of the people. Traditionally, the party advocates a low tariff policy.

2 *The Republican Party* It is traditionally the high tariff party although there is little difference between the Democratic and Republican parties now-a-days in this respect. The leader of the party was Thomas E. Dewey. Industrial and Commercial interests are predominant in this party which draws its supporters mainly from the northern and central states. Both in domestic and foreign affairs, its policy is not wide apart from that of the democratic party although it is opposed to the policy of Government control of competition with private industries. The Republican Party achieved a striking success in the last general election in which it defeated the Democratic Party. It is now the party in power in the U.S.A. with Mr. Dwight Eisenhower as the President of the federal republic.

Besides these two, there is a Labour Party consisting mainly of labour groups. There is also a sprinkling of communists but the present government has succeeded in removing pro-communist elements from public offices or driving them underground.

### SUMMARY

The Constitution was drafted in 1787 and adopted in 1789  
*Elements of the Constitution*

1 Original constitution    2 Twenty-two formal amendments  
3 Statutes    4 Executive decrees    5 Judicial decisions  
6 Customs and Usages

*Characteristics of the Constitution.*

1 Federal—residual powers with the states. It came into existence by the surrender of sovereignty by the component states in favour of the federation. 2. Written. 3. Rigid, the process of amendment being different from the ordinary law-



making process 4 Based upon the theory of separation of powers with mutual check and balance 5 Recognises the supremacy of the constitution which is the supreme law of the land 6 It also recognises the supremacy of the judiciary which is regarded as the custodian of the constitution 7 It is presidential

### *The President—Head of the State*

The President is indirectly elected for a term of four years. He must be 35 years of age and have 14 years residential qualification. He can be removed only by impeachment for treason and bribery.

He appoints consuls, ambassadors, Cabinet members, judges of the Supreme Court with the approval of the Senate. He can make treaties subject to the approval of two-thirds of the Senate. He can declare war with the concurrence of both the Houses. He is the head of the armed forces of the nation.

He can convoke special sessions of the Congress. He may influence legislation through his messages and suspensive veto. He can also influence legislation through his party followers and press conference. He can frame rules and regulations supplementing acts for controlling administrative departments. He can exercise pardon excepting in impeachment cases and cases of offence against the state.

Thus the President is not only the most powerful and influential executive but also has great indirect influence upon legislation. It is an office of President and Prime Minister combined.

### *Cabinet*

It is not a Cabinet in the English sense of the word. As in Britain, the U S A Cabinet also is not recognised by law. The Heads of the administrative departments—ten in all—form the President's Cabinet. Members are appointed by the President subject to the approval of the Senate and they are individually responsible to the President who can also dismiss them. It is solely an advisory body and the President is free to accept or ignore their advice.

### *The Legislature—the Congress*

The Congress is a non-sovereign law-making body consisting of the Senate and the House of Representatives.

The Senate is the Upper House which consists of 98 members, each state electing two members by direct popular vote. Its term of office is 6 years, one-third retiring every two years. The Vice-President of the U S A is the President of the Senate. It has 15 standing committees.

The Senate possesses equal powers regarding initiation of all bills excepting money bills which it can amend. More than any other second chamber, it possesses certain executive powers, namely, ratification of treaties made by the President, confirmation of appointments made by the President. It also acts as the High Court of Impeachment with power to remove from office any civil officer including the President.

Its small size, quasi-permanent duration, popular election of Senators and equality of representation of states have made it the strongest second chamber which can curb the monarchical ambition of the President on the one hand and check the democratic rashness of the Lower House on the other.

*The House of Representatives* is the Lower House consisting of 435 members elected directly by the people for two years.

It possesses equal powers with the Senate except with regard to money bills which must originate in it. It is less powerful because of its very short duration, lack of experience and volume of work which cannot be tackled properly by inexperienced members.

#### *Supreme Court*

*The Supreme Court* of the U S A is the highest federal court, consisting of a chief justice and eight other judges, all of whom are appointed by the President subject to the consent of the Senate. It acts as the custodian of the constitution and possesses the power to declare acts of the Congress null and void. The Supreme Court has in many cases remade the constitution by its power of interpretation in accordance with the doctrine of implied powers.

#### *Party System*

Virtually, there is no difference between the two major political parties—the Republican and the Democratic parties in the U S A. The Republican party is now in power.

### QUESTIONS

1. Contrast the salient features of the Constitution of Great Britain and the United States. (C U 1941)

2. "In England, the legislature is supreme, in the United States, the Constitution is supreme." Examine this proposition. (C U 1946)

3. Examine and illustrate the distinction between the Parliamentary and non-Parliamentary executive from the Constitutions of Great Britain and the U S A.

(Gauhati 1949, C U 1947)

4 Compare the Cabinet in the U.S.A. with the Cabinet in Britain (C U 1950)

5 An American writer has said that the constitution of the U S A is more flexible than the British one. How would you justify this view point? (C U 1951)

6 What are the powers of the Congress in the U S A ? How does the President influence legislation? (C U 1954)

7 Describe the position of the President in relation to the Congress in the U S A (C U 1956)

8 What do you mean by the constitution of the United States of America today? Explain how the constitution of U S A has changed since it first came into force (C U Hon 1953)

9 Compare the position of the Prime Minister of England in the British Cabinet with that of the President of the U S A in the American Cabinet (C U Hon 1951)

10 "The Cabinet in the U S A hardly corresponds to the classic idea of a Cabinet to which representative government in Europe has accustomed us"—(Laski) Examine the statement (C U Hon 1952)

11 Discuss the position and functions of the Supreme Court of the U S A as the "guardian" of its constitution

Discuss in this connexion what is meant by the American doctrine of judicial review of legislation (C U Hon 1958)

12 Discuss the position and function of the Supreme Court in the constitutional system of the U S A (C U 1958)

13 Discuss the position of the President of the United States of America in relation to his cabinet (C U 1959)

14 Describe the composition of the American Senate and discuss why it is called the most powerful Second Chamber in the World (C U 1960)

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## CHAPTER IV

### UNITED NATIONS

#### *Reference*

United Nations Charter—Published by U S Office of War Information.

**Genesis of the U.N.** The failure of the League of Nations to maintain world peace and to promote international co-operation manifested itself during the Italo-Abyssinian war when it deliberately adopted a policy of masterly inaction against Italian aggression. All peace-loving people who had built up high hopes about the future lost their faith in the League which miserably failed to restrain even its own members from taking recourse to arms. With the invasion of Poland by the Hitlerite hordes in the early hours of September, 1, 1939, the huge international edifice collapsed before the very eyes of those whose patient labour had built it up for ensuring perpetual peace among mankind. The tremendous ravages of the Second World War once more reminded the warring nations of the supreme importance and necessity of such an organisation on a world basis which would enable them to avoid war by peaceful means. The idea of a world organisation, like that of the League, originated with the American President, the late Mr Roosevelt, who in his Presidential message to the Congress on January 6, 1941, emphasized the need for a new world order based on four essential human freedoms.

The genesis of the UN may be traced to the historic eight-point declaration made jointly by the President of the USA and the Prime Minister of Great Britain on August 14, 1941. The declaration which was, on January 1, 1942, signed by the representatives of 26 Governments forms the basis of what is known as the *Atlantic Charter*. The Charter sought to save future generations from the ravages of war, to enforce the equal rights of individuals as well as of nations and to establish an era of peace, prosperity and progress for all nations, big or small. With a view to accomplishing these ends, the charter enjoined upon all to combine their efforts.

This was followed by the *Moscow Declaration* of October, 1943, which also emphasized the need for an international organisation of sovereign states for the preservation of world peace and security

The first move to establish an international organisation was taken by the United Nations at Hot Springs in May and June, 1943. This conference set up a machinery for the supply of food and other necessary articles to the suffering peoples of the world. Another conference was held on November, 1943, in Atlantic City which discussed the problem of post-war reconstruction and rehabilitation, and an association was created with the object of improving agriculture. The next move towards an international organisation was taken at the *Bretton Woods Conference* in July, 1944, in which representatives of 44 States participated. This was mainly a monetary and financial conference of which the principal object was to set up an International Bank for Reconstructions and Development in every part of the world for restoring productive wealth destroyed by war. But the Soviet Government refused to sign the Bretton Woods Agreement. The representatives of UK, USA and USSR held another conference at Dumbarton Oaks from August to October, 1944 and drew up a scheme for an international organisation for the preservation of world peace. The proposals made at Dumbarton Oaks were implemented by the United Nations Conference held at San Francisco on April 25, 1945. The San Francisco Conference gave a definite shape and form to the previous proposals for an international organisation to promote international peace.

The United Nations officially 'came into existence on October 24, 1945. The UN charter proclaims, "We the people of the United Nations, determine to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrows to mankind and to reaffirm faith in the fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women and of the nations large and small."

The U N is an association of sovereign states whose object is to preserve international peace and security and to

co-operate in the establishment of political, economic and social conditions which are favourable to the realisation of its aims and objects. The U.N. is based on the principle of sovereign equality of all members but the U.N. charter expressly forbids the U.N. to intervene in matters within the domestic jurisdiction of any state. The total number of states joining the U.N. is at present ninety-nine, notable absentees being Peoples' Republic of China, Japan and Germany. According to the provision of the 'Package deal', 16 new states were admitted to the U.N. recently.

The seat of the U.N. is the New York city. The official language of the United Nations are Chinese, English, French, Russian, and Spanish, the working languages are English, French, and Spanish (in the General Assembly).

**Principal Organs of the U.N.** The principal organs of the U.N. are (a) the General Assembly, (b) the Security Council, (c) the International Court of Justice, (d) the Economic and Social Council, (e) the Secretariat and (f) the Trusteeship Council.

**The General Assembly.** The General Assembly which is the policy-forming and supervisory organ of the U.N., consists of the representatives of all member-nations. Each of the nations may be represented by 5 members but has one vote only. The Assembly must meet at least once a year but it can meet oftener, if necessary. A two-thirds majority of votes is necessary for decisions on important questions, on other questions, a simple majority of members present and voting. The work of the General Assembly is divided between six main committees, which are found on the basis of one member from each of the states. The Assembly elects the non-permanent members of the Security Council and also the members of the Social and Economic Council. It has the right to admit new members to the U.N. on the recommendation of the Security Council.

**The Security Council.** The Council is composed of 11 members, of whom five, viz., U.K., U.S.A., U.S.S.R., France and Nationalist China are permanent members and 6 non-permanent members, elected by the Assembly for a term of two years. In electing non-permanent members to the Coun-

cil, a convention has developed to the effect that due regard should be paid by the Assembly to an equitable geographical distribution of seats. A state which is not a member of the Council may be invited to participate without voice in the discussion of questions affecting its interests. Each member of the Council holds the office of the President of the Security Council for one month in rotation in the English alphabetical order of their names. The Council is entrusted with the task of bringing about pacific settlement of international disputes. If peaceful means fail, the council has the power to apply force against the nation which refuses to abide by its decision. The decision of the Council is, however, subject to the veto of any of the Big Five, having permanent seat on the Council. There is also an eleven-member Disarmament Commission which functions under the Council and prepare proposals on disarmament and atomic prohibition.

**The International Court of Justice.** The Court consists of 15 judges elected by the Assembly. Its main function consists in the peaceful settlement of international disputes. It can also give advisory opinion on legal questions. It sits at the Hague.

**The Economic and Social Council.** The Economic and Social Council comprises 18 members elected by the General Assembly for a period of 3 years term. The Council is charged with the duty of co-ordinating the work of international agencies and to deal with matters relating to international, social and economic co-operation.

**The Secretariat.** The Secretariat of the UN consists of the working staff under its Secretary-General. The Secretariat is at present functioning through eight of its departments. Mr Dag Hammarskjöld of Sweden is now the Secretary-General.

**Trusteeship Council.** "This Council will provide for an international trusteeship system for the administration and supervision of such territories as may be placed thereunder." It consists of permanent members of the Security Council members who administer trust territories and also other members elected for three years by the General-Assembly.

The aim of the Council is to promote the political, social, economic, and educational advancement of the people of trust territories and to lead them towards self-government

Besides these, the U.N. has a number of subsidiary organisations established by inter-governmental agreements. These organisations have great responsibility in economic, social, cultural, educational, health and related fields. There are at present ten such organisations, namely, Economic, Social, Human Rights commissions, Military Staff Committee, United Nations Educational, Scientific and Cultural Organisation (UNESCO), World Health Organisation (WHO), International Labour Organisation (ILO), Food and Agriculture Organisation (FAO), International Civil Aviation Organisation (ICAO), International Bank of Reconstruction and Development (IBRD), International Monetary Fund (IMF), Universal Postal Union (UPU), International Telecommunication Union (ITU) and World Meteorological Organisation (WMO).

**The U.N. as an International organisation.** The U.N., like its predecessor, the League of Nations, is built upon the bleeding and prostrate bodies of defeated powers, viz., Germany, Italy and Japan. An organisation which professes to secure and maintain world peace cannot possibly succeed by ostracising and humiliating powerful nations like Germany and Japan which have made definite contributions to the progress of civilisation. Moreover, the U.N., like the League, is dominated by the big three, the U.K., the U.S.A. and the U.S.S.R., thus sacrificing the very fundamental principle of sovereign equality of states. The prospect of perpetual peace will depend on the mutual trust and good-will of United Nations and also on the extent to which the U.N. is able to exercise its control over atomic energy.

It is very unfortunate that the march of events, in the course of the last few years, has given rise to grave misgivings regarding the future of the U.N. In place of unity among the nations, signs of disunity are gradually becoming more prominent. The Anglo-American Bloc and the Russian Bloc into which the U.N. has been split seem to be more interested in power-politics than in the solution of the vital problems of the different nations on which world peace so badly depends.



Mr Trygve Lie, the ex-Secretary-General of the U.N., sounded a timely note of warning to the members to the effect that if the U.N. did not live and act up to its original ideal, it would soon go the way its predecessor, the League of Nations, had gone. The growing tension between the two Blocs reached its peak on the questions of inclusion of Red China in the U.N. and the armed conflict between North and South Korea. Armed intervention of America on the side of South Korea against the North was an infringement of the fundamental principles of the U.N. charter and this might have led to a world conflagration. The Korean war has come to an end but the main problem which gave rise to armed conflict has not yet been solved. The Indo-Pak differences on Kashmir, the Israel-Syrian frontier violation, the Persian Oil dispute—the question of admission of the Peoples' Republic of China to the U.N. are all problems which still remain unsettled and the U.N. can justify its existence only by settling these problems.

### SUMMARY

The League of Nations failed not only to preserve peace and to promote international co-operation but indirectly hastened the Second World War. During the war, it was increasingly felt that post-war world must be organised on a federal basis if the world was to be saved from future wars. Accordingly it became necessary to devise plans for setting up another international organisation for the purpose of preserving peace. The initiative in this direction was taken by the then U.S.A. President who induced the leaders of other allied powers to support his scheme. As a result of the deliberations of the leaders of allied powers, the United Nations came into existence. But it must be pointed out here that the Axis powers had absolutely no voice in setting up the organisation.

The United Nations consists of—

(1) *An Assembly* with representatives of all member-nations, each nation having an equal vote. It must meet once a year and discuss various problems,

(2) *The Security Council* constitutes the executive of the U.N. It consists of eleven members, including permanent representatives of the U.K., U.S.A., U.S.S.R., France and Nationalist China, and six others to be elected by the Assembly for two years, one-half retiring every year. Military action may

be taken for enforcing peace but this action must be approved by a majority vote, provided all permanent members agree ,

(3) *Trusteeship Council* is an organisation which looks after the administration of people who are not self-governing ,

(4) *The Economic and Social Council* which consists of 18 members, discusses and considers all economic and social problems of the world Besides these, the U N has a secretariat, an international court and a number of other subsidiary organisations like the UNESCO, FAO, WHO, ILO, etc

The U N has to some extent succeeded in promoting the economic and cultural co-operation among its members but its record of success in solving political problems of the world is not at all encouraging

### QUESTIONS

1 Give a brief account of the genesis of the United Nations

2 What are the objectives of the U N ? How far it has succeeded in promoting these objectives?

3 Describe the composition and functions of the Security Council Has it been able to guarantee security to the weaker nations?

4 'The failure of the U N to control atomic energy and hydrogen bomb and to prevent the rivalry between the U S A and the U S S R unmistakably proves that it is no better than its predecessor—the League of Nations' Do you agree? Give your reasons

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## CHAPTER V

### GOVERNMENT OF THE DOMINION OF CANADA

#### *References*

A. Brady—Democracy in the Dominions

R. M. Dawson—The Government of Canada

M. Cloué—Canadian Government and Politics

A. B. Keith—The Dominions as Sovereign States—  
Their Constitutions and Government

**Introduction.** The Dominion of Canada is not only one of the oldest and most populous of British Self-Governing Dominions, but it has also enjoyed a type of Federal Government which has considerably influenced the character of Federal Governments in other parts of the world. Originally, a colony of France, settled mostly by the venturesome gallic fishermen, traders and missionaries. Canada passed into the hands of the British in accordance with the terms of a treaty between England and France in 1763. This was followed by a heavy migration from England and in a few years the new-comers from England outnumbered the old French colonists. An agitation for a responsible Government carried on by a large number of American immigrants into Canada forced the British Government to pass the Canada Act of 1791, which set up two distinct provinces, one English province of Upper Canada to the west, and a French province of Lower Canada to the east. The Act established in Canada only a system of representative, but not a responsible Government. The Act failed to satisfy the growing political aspirations of the Canadians and both the provinces went simultaneously into rebellion. The British Government with a view to exploring the causes of the colonial grievances, sent Lord Durham to Canada to serve as High Commissioner there and to recommend such changes in the system of administration as he might think proper. Lord Durham made a masterly analysis of colonial grievances and recommended that Upper and Lower Canada be united under a single Government which should be made responsible to the people. Sometime after, a scheme of

ederation was prepared and finally in 1867, the British North America Act was passed. This Act established a Federal Government of the Parliamentary type and it still continues to serve as the constitution of the Dominion of Canada. But though federal in structure, the constitution has adopted some of the more important features of the British constitution in accordance with the famous Quebec Resolution of 1864 which declares, "In framing a Constitution for the general Government, the conference, with a view to the perpetuation of our connection with the Mother Country, and the promotion of the best interests of the people of these Provinces, desire to follow the model of the British Constitution, so far as our circumstances permit." In recognition of her services during the First World War, Canada along with other Dominions was accorded equality of status with the Mother Country. The Statute of Westminster, 1931, authoritatively defined her position which is as good as independent.

**Characteristics of the Constitution.** The Dominion of Canada is a union of nine provinces, viz., 1. Ontario, 2. Quebec, 3. Nova Scotia, 4. New Brunswick, 5. Manitoba, 6. Prince Edward Island, 7. British Columbia, 8. Alberta, 9. Saskatchewan. The Government bears a superficial resemblance to that of the United States in that both of them are federal in character. But the resemblance ends there. The architects of the Canadian constitution gave limited powers to the Provinces and all powers not definitely granted to the Provincial governments, were entrusted to the Federal Government. There are few federations which have given such a wide range of powers to the Central Government. Thus in the U.S.A., residuary powers remain with the states, while in Canada, residuary powers are vested in the Federation. *Secondly*, the constitution is federal more in its form than in substance inasmuch as the Dominion Government possesses the power not only to appoint Lieutenant-Governors for the provinces but also the power to disallow acts passed by the Provincial Legislatures. The Dominion Government exercises its control over the Provincial governments in another form. The Dominion Government has in recent years introduced the system of grants-in-aid paid to the Provincial govern-

ments. It is through this system of grants-in-aid that some control is exercised by the Dominion Government over the provinces which are required to spend the Dominion grant for specific purposes strictly in accordance with the direction of the Central Government. The national government of the U.S.A. possesses no such powers over the State governments. The position of the Dominion Government of Canada has further been strengthened by the absence of a Federal Judiciary to interpret the constitution in cases of constitutional disputes which are settled by the Judicial Committee of the Privy Council. *Thirdly*, the Canadian constitution resembles the British constitution in that it is based on the system of Cabinet responsibility—the Executive being an integral part of the Legislature. Thus the constitution of Canada though federal in form is based on the British model in more ways than one. The Executive in Canada is of the parliamentary type which is a copy of the British model. In another respect she has followed the British tradition by organising the Senate, the Upper House of Parliament, which is composed of members nominated for life by the Governor-General, a system which closely resembles the hereditary character of the House of Lords. Again closely following the British model, the Canadian constitution provides for the creation of a Privy Council for which there is no provision in the constitution of any other Dominion. The Judiciary in Canada is also less powerful in view of the fact that its power to interpret the constitution has been reduced because the Governor-General is vested with the power to disallow bills passed by the Provincial Legislatures.

The subjects of administration have been divided into three lists. Certain subjects like defence, currency, postal services, marriage and divorce, etc., belong exclusively to the Federation, the provinces have been granted exclusive power of legislation over subjects like property and civil right, education, hospitals, administration of justice, etc., while both the Federal and Provincial Governments have concurrent jurisdiction over agriculture, immigration, etc.

Strictly from the legal point of view, the power of amendment of the constitution belongs to the British Parliament.

But in actual practice any amendment desired by the Federal Legislature is usually passed by the Imperial Parliament unless it is opposed by the provinces. The Statute of Westminster has conferred the power of amending the constitution upon the Dominion Legislature, provided the Federal and Provincial Legislatures agree upon a common method of amendment.

**The Governor-General.** The titular chief executive in Canada is the Governor-General who is appointed by the Crown for a term of five years on the advice of the Dominion Government. The Governor-General possesses extensive powers. He can summon and dissolve the Dominion Legislature, can give assent to legislative measures, make appointment to offices and can disallow acts of the Provincial Legislatures. But in exercising all these powers, the Governor-General substantially does the same thing as is done by the King in England. He exercises all these functions on the advice of the Dominion ministers who are responsible to the Canadian House of Commons.

**The Cabinet.** The Canadian political system is an imitation of the English model. As in England, the Dominion Cabinet is the real executive, though it has no legal status. It is the Privy Council of Canada which alone has the power to aid and advise the Governor-General. Cabinet members are chosen, as in England, by a Prime Minister whose responsibility to the Lower House is the same as in England. Cabinet members must be members of the Canadian Parliament and the whole Cabinet must go out of office, as in Great Britain, whenever it loses the confidence of the majority in the House. The Cabinet consists of 19 members including the Prime Minister who is invariably the leader of the majority party in the House of Commons. The powers and functions of the Cabinet are almost the same as those of the Cabinet in England. As in England, so in Canada, the Governor-General does not attend or preside over the meeting of the Cabinet. So the characteristic features of the Cabinet form of government in Great Britain are all present in Canada. The exclusion of the Governor-General from the Cabinet which is not recognised by law, the political homo-

generosity of the Cabinet, leadership of the Prime Minister, unity and solidarity of the Cabinet and above all, close correspondence between the executive and the legislature are features common to the Cabinets of both the Mother country and the Dominion.

**The Legislature.** The Legislature consists of the King represented by the Governor-General and two Houses, viz., the Senate and the House of Commons.

**The Senate.** It is in the organisation of the Upper House that Canada set up a new model of her own without adopting either the British or the U.S.A. model. The Canadian Senate consists of 96 members, all of whom are nominated for life by the Governor-General on the advice of the Prime Minister. Senators must be 30 years of age and must be born or naturalized British subjects. The constitution therefore makes no provision for the equality of representation of the provinces in the Senate nor does the mode of appointment ensure the selection of distinguished men who can command respect both at home and abroad.

The Senate possesses equal powers with the Lower House in all matters excepting money bill which must originate in the House of Commons. But the Senate possesses the power to amend or reject money bills. In the event of a dead-lock between the two Houses, the Crown may appoint a committee consisting of 4 to 8 members for overcoming the dead-lock but such a necessity has never arisen. The normal tendency on the part of the Senate is to leave things more and more in the hands of the House of Commons. In point of power, the Senate lags far behind even that of the House of Lords. The chief cause of its weak position arises out of the fact that Senators represent nobody. All Senators are nominated for life and nominated members cannot command any respect from the people. Another factor which has contributed to its weak position is that no Cabinet member is selected from the Senate. In England, the cabinet includes some members from the House of Lords and this practice has added some power and prestige to the House of Lords. But in Canada, Senate goes wholly unrepresented in the Canadian Cabinet. Government measures in the Senate are up-

held not by a minister but by a leader who is appointed to look after government bills

**The House of Commons.** The House of Commons at present consists of 245 members, elected on the basis of adult suffrage. The normal duration of the House is 5 years, but the House may be dissolved earlier by the Governor-General on the advice of the Prime Minister. The House elects its own Speaker, subject to the approval of the Governor-General.

The House is the real pivot of legislative powers. It plays the more important role in legislation and controls the Cabinet. All financial measures are to originate in this House. The process of law-making is also the same as in the Mother country.

**The Judiciary.** There is a Supreme Court at Ottawa, which exercises an appellate jurisdiction both in civil and criminal cases throughout the Dominion. The court consists of a Chief Justice and six Puisne Judges. The Supreme Court, it should be remembered, has nothing to do with the work of interpretation of the constitution which is still being done by the Judicial Committee of the Privy Council. The Provinces have their Superior Courts and District and County Courts, the judges of which are appointed by the Governor-General on the advice of the Dominion Government and they hold office during good behaviour.

The Statute of Westminster left Canada free to abolish all appeals to the Privy Council. But a section of the Canadians, especially the French Canadians, want to retain the system as they regard the right to appeal to the Privy Council as an important bulwark of their minority rights. Since 1950, the system of appeals to the Privy Council has been abolished.

**Provincial Governments.** Canada is a federation of nine provinces, each of which has its own provincial Government consisting of a Lieutenant-Governor, a Cabinet, called the Executive Council and a Provincial Legislature. The Lieutenant-Governor is appointed by the Governor-General for a five-years term on the advice of the Dominion Cabinet. The Lieutenant-Governors possess no personal authority inasmuch



as all their official acts are done on the advice of the Provincial Cabinet which is the real executive in the provinces. Cabinet members are appointed by the Lieutenant-Governor from amongst the members of the Legislature to which the Cabinet members are responsible. The Legislature which consists, in seven provinces, of a single chamber, is elected by universal suffrage. In two provinces, Quebec and Nova Scotia, the Legislature is Bi-cameral, consisting of two houses, viz., the Legislative Council and the Legislative Assembly. Provincial laws are subject to disallowance by the Dominion Government which, however, seldom uses the power now-a-days.

**Political Parties in Canada.** Canada, unlike the Mother country, is the home of too many political parties, the most important of which are

(1) *Liberal Party* which has been continuously in power for the last thirty years. Of the 96 members of the Senate, this party is represented by 66 members and in the lower house by 127 members out of a total of 245. At present, the Liberal party is in favour of increasing the powers of the Federal Government. Traditionally the party advocates a policy of low tariff and in general, it is opposed to any policy of state intervention in the economic affairs of the individual. The leader of the party was MacKenzie King.

(2) *Progressive Conservative Party*. This party advocates high tariff for protecting Canadian industries against foreign competition and favours a more direct control of the state over the national economic life. Its present strength in the Senate and the House of Commons is 22 and 66 members respectively.

(3) *Co-operative Commonwealth Federation Party*. This party is comparatively of recent origin and represents the Socialist group in Canada. It is largely composed of labourers, farmers and socialist workers. It advocates planned production and immediate nationalisation in order to provide full employment, social service and national minimum wage. It has 28 representatives in the lower house.

(4) *Social Credit Party*. This party was organised in 1935 and advocates "social credit monetary theories as a solu-

tion of provincial and federal problems" It is represented by 13 members in the House of Commons

(5) *Labour Progressive Party*. The followers of the Communist Party formed, in 1943, this party under the leadership of Tim Berck. The party has little following in the country

(6) *Bloc Populaire Canadian* The party is composed mainly of French Canadians and advocates French Canadian nationalism. It has 2 members in the lower house

## SUMMARY

### *Characteristics of the Constitution.*

(1) Federal with a strong centre

(2) Parliamentary

### *The Governor-General—the Head of the Executive*

The Crown is represented in the Dominion government by the Governor-General who is appointed by the King on the recommendation of the Canadian Cabinet

He is the constitutional head of the government and legally possesses extensive executive and legislative powers. But actually all these powers are exercised by the Dominion Cabinet

### *Cabinet*

It is the real executive consisting of about 20 members, all of whom must be members of the House of Commons. In its organisation, function and relation to the legislature, the Canadian Cabinet is an exact copy of the British Cabinet

### *Legislature—*

#### *The Senate*

It consists of members nominated for life by the Governor-General on the recommendation of the Dominion Prime Minister. Theoretically, the Senate possesses co-equal powers with the House excepting in money bills but practically it has no power nor any influence on the government

#### *House of Commons*

It consists of 245 members elected for a term of five years. Most of the measures including money bills originate here. It controls the executive and also all financial measures

### *Provincial Governments*

Each of the nine provinces has a Lieutenant-Governor who is appointed by the Governor-General for five years on the recommendation of the Dominion Cabinet. The executive in the province is the Cabinet members who are appointed by the Lt-Governor from amongst the members of the legislature to which they are responsible. The provincial legislatures, excepting in two provinces, are unicameral and provincial laws are subject to disallowance by the Governor-General.

### *Party System*

Canadian political system differs from that of the Mother Country in respect to her party organisation. There are too many parties in Canada of which Liberal Party, Block Populaire Canadian and Labour Progressive Party are important.

## QUESTIONS

1 Discuss the main features of the Canadian constitution. In what essential respects does the Constitution of Canada differ from that of the U.S.A.?

2 What are the fundamental principles underlying a Federal form of Government? To what extent does the constitution of the Dominion of Canada conform to a normal Federal Type of Government? (C U B Com 1948)

3 Discuss the constitutional implications of the Statute of Westminster, 1931.

Discuss, in this connection, the position of the Governor-General of Canada today.

4 How far is the Constitution of Canada a copy of the British and U.S.A. Constitution?

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## CHAPTER VI

# GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA

### *References*

A Brady—Democracy in the Dominions

A B Keith—The Dominions as Sovereign States—  
Their Constitutions and Governments

Bryce—Modern Democracies, Vol. I.

G Greenwood—The Future of the Australian Federalism.

**Introduction** Originally the island was used as a penal colony but in course of time it grew into a number of colonies of free settlers and liberated prisoners. Attempts were made from time to time to bring them under a federal form of government but the attempts failed. It was only in the year 1900, when at the request of the colonial governments, the Commonwealth of Australia was created by an act of the Imperial Parliament. The constitution was duly ratified by the people and even now an amendment of the constitution requires the assent of a majority of the voters in a majority of the states. The Commonwealth is composed of six member-states, namely, New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania. Besides these, the Commonwealth Government directly administers certain other territories, viz., the Northern Territory, Papua, mandated territories and Federal Capital Territory of Canberra.

**Features of the Constitution.** Australia, like Canada, adopted the Federal constitution but there are striking differences between the two Federal constitutions. Australia, in framing its constitution, adopted the U.S.A. type of federation which Canada so scrupulously avoided. Unlike Canada, the Central Government of the Commonwealth has been granted limited powers while residuary powers have been entrusted to the states which can maintain direct relation with the Mother Country through their Agents-General in London. There are also certain concurrent powers like foreign and inter-state commerce, postal services, etc. Moreover the constitution

imposes certain restrictions on the powers of both the central and state governments. The constitution leaves the state free to frame their constitutions in their own way provided they are not inconsistent with the provisions of the Commonwealth constitution. In financial matters, however, the Commonwealth government possesses larger powers than the Federal government of the U.S.A. Its power to levy taxes is almost unlimited. It can also borrow money. Since the coming into power of the Labour party, the power of the Commonwealth government is steadily on the increase. Another distinguishing feature of the Federal constitution is that the Federal Government of the Commonwealth has no power to disallow any act of the State Legislatures—a power which is vested in the Federal government of Canada. Again political equality of the member states has been secured in Australia by granting all the six provinces equal representation in the Senate, the members of which are elected by the people. Furthermore, unlike the Canadian Supreme Court, the High Court of Australia possesses the full competence to interpret the constitution. An appeal may be preferred to the Privy Council in England but such a necessity is seldom allowed to crop up.

Although in some respects the Government of the Australian Commonwealth resembles that of the U.S.A., in other respects, it has exhibited its preference for the British model of responsible government. The executive heads both at the centre and in the states are appointed by the King and are not elected by the people as in the U.S.A. The constitution is written and rigid and in these respects, it differs fundamentally from that of the Mother Country.

**The Executive.** The executive authority which is theoretically vested in the Crown, is nominally exercised by the Governor-General, who is appointed by the King on the advice of the Commonwealth Government. Like the King of England whom he represents, the Governor-General is no more than a mere 'convenient working hypothesis'.

**The Cabinet.** The Cabinet which consists of the Prime Minister and ten other ministers is the real executive and exercises the executive authority of the Commonwealth Govern-

ment. Cabinet members must be members of the Federal Parliament and are responsible to the Parliament for their policies and actions. One peculiar feature of the Australian Cabinet is that generally the Prime Minister chooses his other colleagues. But when the Labour Party forms the government, the right to choose other ministers is given to the party Caucus and not to the Prime Minister. So a Labour Premier in Australia does not command from his colleagues that much of loyalty and obedience which is necessary for concerted policy and action.

**The Legislature.** The legislative powers of the Commonwealth is vested in the Governor-General as the representative of the King and two Houses—the *Senate* and the *House of Representatives*. The numerical strength of the Senate is 36, six being elected from each of the six states on the basis of preferential voting by the whole of each state as a single electorate. Senators are elected for a period of six years, one-half retiring every three years. The Senate possesses almost equal powers with those of the Lower House except in the origination of money bills which must be introduced in the Lower House. But the Senate can reject money bills. In case the Senate refuses to pass a bill twice with an interval of three months, the Governor-General may dissolve both the Houses. There is a provision for joint sitting of both the Houses, if the disagreement continues even after the new election. Ultimately, the will of the Lower House is to prevail because the numerical strength of the Senate is less than half the numerical strength of the Lower House. Though Senators are elected on the basis of states, they have seldom succeeded in upholding the rights of the states they represent.

The House of Representatives consists of 76 members, the total number being distributed among the states in proportion to population as recorded by the latest census. All adult British subjects have the right to vote. The right to vote, as a rule, is denied to the British Indians, and aboriginal Nations of Asia, Africa and Pacific Islands. The normal duration of the House is three years unless it is earlier dissolved by the Governor-General. The House possesses the sole right to initiate money bills and it also controls the Executive.

**The Judiciary.** The High Court of Australia is the highest Judicial organisation in the Commonwealth. It consists of a Chief Justice and five other justices, all of whom are appointed by the Governor-General. The Judges hold office during good behaviour. The High Court exercises both original and appellate jurisdiction. As a court of the first instance, its jurisdiction extends to all matters arising under treaties, or between the States of the Commonwealth or in other matters determined by the Parliament. It also hears appeals from any other Federal Courts or from the Supreme Courts of the states. Appeals may be made to the Privy Council in matters relating to the interpretation of the constitution, provided the High Court grants a certificate of appeal. But such certificates, as a rule, are not issued by the High Court.

**States.** Each of the six Australian States has its own government consisting of a Governor, a Cabinet, and a Bicameral Legislature except in the state of Queensland where there is a single House. The Governor is appointed by the King and holds a constitutional position like the Governor-General of the Commonwealth. The real executive authority is exercised by an Executive Council whose members are appointed by the Governor from amongst the members of the Legislature and to the latter, the members are responsible.

### **Party System in Australia.**

(1) *Labour Party* This is the most well-organised party in Australia and advocates friendship and close co-operation with the U.S.A. The party came into power first in 1941 and was returned again in 1946 with a safe majority of 33 and 43 memberships in the Senate and the House of Representatives respectively. Reorganisation of defence and regulation of industry are the two main items of its policy.

(2) *Liberal Party* Originally known as the United Australia Party, this party was reorganised as liberal party with a view to restoring the lost position of non-Labour parties. The party advocates closer unity among the members of Commonwealth of Nations. In domestic affairs, it supports free enterprise, lower taxation and industrial development. It has altogether 19 representatives in the legislature.

(3) *Country Party*. The party is closely connected with the Liberal Party and pursues a policy similar to that of the Liberal Party, but it is interested more in the improvement of the condition of the primary producers

Besides these, there is a small group known as the *Independent Labour Party*.

### **Amendment of the Constitution.**

Proposals for constitutional amendment must be passed by absolute majorities in both Houses of Parliament and then the proposals are to be submitted to a referendum of the electorate and ratified by a majority of voters and a majority of states. But neither the Commonwealth Parliament nor the people can change a provision of the constitution affecting the proportional representation of a state in either House of Parliament, or the minimum number of members in the House of Representatives, or the limits of the state or any provision relating to the status of a state. In making such changes, the approval of a majority of voters of the state concerned is necessary. So the Commonwealth of Australia has evolved a new method of amendment of her constitution which is more democratic and is more like the method of amendment adopted by the Swiss Republic.

## **SUMMARY**

### *Characteristics of the Constitution*

1 Federal, closely following the U S A model, residuary powers rest with the states

2 Parliamentary

### *Executive*

The Governor-General who is appointed by the Crown on the advice of the Commonwealth Government for 5 years is the executive head. He is the constitutional head of the government. Actual powers are exercised by the Cabinet.

### *Cabinet*

The real executive is the Cabinet which consists of ministers who must be members of either House of Legislature. The whole policy of the government is determined by the ministers who are responsible to the legislature. It controls the legislative programme and guides the deliberations of the legislature.



*Legislature—**The Senate*

The Senate consists of 36 members, each state sending six members on the basis of equality of representation. One-half of the members retire every third year.

It possesses co-equal powers with the Lower House except in regard to money bills which it can neither originate nor amend but can reject.

*House of Representatives*

It consists of 76 members chosen by the states in proportion to population for 3 years on the basis of adult franchise. It is the more powerful because it originates money bills and controls the executive.

*The Judiciary*

The High Court of Australia is the highest court exercising both original and appellate jurisdiction. Judges are appointed by the Governor-General and hold office during good behaviour.

*States*

Each of the states has a Governor, a bi-cameral legislature (excepting in one) and a state judiciary. The Governor is appointed by the King and holds a constitutional position. The real executive authority is vested in an Executive Council whose members are appointed by the Governor from among the members of the legislature to which they are responsible.

*Party System*

There are three major political parties in the country, namely, Labour Party, Liberal Party and the Country Party.

**QUESTIONS**

1. Contrast "Canadian Federalism with Australian Federalism" (C U B Com 1954)

2. Compare the salient features of the constitution of Canada with those of the Australian constitution.

3. Comment on the scheme of distribution of powers between the Central and the State Governments in the Constitutions of Canada and Australia (C U B Com, 1957)

4. Discuss the process of amendment of the Canadian and Australian Constitutions.

5. Discuss the plan of division of powers between the Central and local legislatures in Canada and Australia.

(C U B Com 1955)

## CHAPTER VII

### GOVERNMENT OF THE UNION OF SOUTH AFRICA

#### *References*

Munro—The Governments of Europe Ch. XIX.

A. B. Keith—The Governments of the British Empire.  
Overseas Reference Book of the Union of South Africa  
(London, 1945)

**Characteristics of the Constitution.** Of the self-governing Dominions, the Union of South Africa is the youngest and presents features which are fundamentally different from those of the other two Dominions. The Union consists of four provinces—Cape Colony, Natal, Transvaal and the Orange Free State—which were united by the South Africa Act, passed by the British Parliament in 1909. The Union differs from the federations of Canada and Australia in this that it is not based upon an enumerated division of powers between the national and local authorities. The Union Parliament has been given virtually full and complete authority by the constitution, while the provinces have been granted powers only over minor subjects like hospitals, markets, pounds, local governments, etc. Higher education is reserved for the Central Government. The Union Parliament may delegate to the four Provincial Governments such powers as it deems fit and it reserves the right to approve or disapprove a law passed by the Provincial Governments. The provincial executive—the Administrators—are appointed by the Governor-General of the Dominion and are completely subordinate to him. Hence it follows that the provinces of the Union are no better than mere administrative divisions. The South Africa Union, therefore, is a federation in form only, it is in reality a Unitary Government. The constitution is, therefore, a curious combination of unitary and federal principles, seeking to unite two different racial elements, viz, the Dutch and the English.

The constitution, however, retains certain features, of a Federal Government, especially in the composition of the

Senate. The principle of political equality of the provinces has been preserved by giving the provinces equal representation in the Senate and by distributing the seats of the various federal institutions to the different provinces. Thus Pretoria in Transvaal is the administrative capital, while the seat of the Union Parliament is at Cape Town in Cape Colony and the Appellate Division of the Supreme Court sits at Bloemfontein in the Orange Free State.

The Union Parliament is the sole authority to amend the constitution, though the South Africa Act, 1909, imposed certain restrictions with regard to the amendment of the Cape native franchise and of the provisions for securing the equality of Dutch and English languages. But as the restrictions of the Colonial Laws Validity Act are no longer applicable, the Union Parliament now possesses the full and complete power to change the constitution of the Union by simple legislative procedure.

The position of the Union Government is quite different from that of Canada or Australia in another important respect. The Status of Union Act, passed by the Union Parliament in 1934, has vested in the Union the legal power to secede or to declare neutrality in case Great Britain is at war with any other country. On the outbreak of the Second World War in 1939, an influential section of the Union Government under the leadership of General Heitzog advocated a policy of neutrality, which, if adopted, would have caused incalculable difficulties to Great Britain, especially in the successful prosecution of her naval warfare against the enemy. But General Heitzog had to resign on being defeated on this issue in the Legislature.

**The Union Executive—The Governor-General.** The Governor-General, like the Governors-General of Canada and Australia, is the constitutional head of the government. He is appointed by the King on the advice of the Union Cabinet and exercises the same range of powers, executive, legislative and judicial as his counterparts in the other two Dominions.

### *The Executive Council.*

The real power is vested in an executive council whose members are in charge of different departments. The members of the Executive Council are appointed by the Governor-General and hold office during his pleasure. But as is the practice in Britain, the Governor-General is to select members from the majority party in the Legislature. The leader of the majority party becomes the Prime Minister on whose recommendation the Governor-General appoints other members. The executive council, like the British Cabinet, formulates policies and executes them. The executive councillors remain in office so long as they command the confidence of the legislature.

**The Union Legislature.** The Legislature is a Bi-cameral one, consisting of the King, the Senate and the House of Assembly.

The *Senate* is made up of forty-four members, eight elected by the Legislative Council of each province and eight nominated by the Governor-General on the advice of the Cabinet. The Representation of the Natives Act, 1936 provides for a direct representation of Natives in the Senate. Accordingly four additional Senators are elected from the four electoral areas into which the Union is divided. Of the nominated members, four must be men who have knowledge about the reasonable wants and wishes of the coloured races. Elected Senators sit for ten years while nominated members go out of office with a change of Ministry. Senators must be British subjects of European descent and 30 years of age, must reside in the province for five years and hold property worth at least £500. The nominated members are not required to satisfy the property qualification.

The *Senate* possesses almost the same range of powers with the House except that it can neither originate nor amend money bills. In case of disagreements between the Houses, the Governor-General may convene a joint meeting of both the Houses which will decide the controversial issue by a majority of votes. As the numerical strength of the Senate is about one-fourth of that of the House, it is powerless to prevent the enactment of a law which the

House is bent on passing. It is curious to note that the Senate cannot amend financial bills but it can reject them. A bill twice rejected by the Senate in two consecutive sessions may be referred to a joint session of both the Houses, called by the Governor-General and the bill will become an act if approved by a simple majority of total number of members of both the Houses.

The *House of Assembly* consists of 153 members, elected for a term of 5 years from single member constituencies. Franchise has been granted to all adults, male and female. Seats have been distributed in the following way: Cape of Good Hope—53, Natal—16, Transvaal—64, Orange Free State—14. Under the Representation of Natives Act, 1936, the Natives have been given the right to elect three members who hold office for five years, notwithstanding an earlier dissolution of the House. The House elects its own Speaker but does not follow the British practice in the matter of electing the Speaker. It has the sole right to initiate money bills. The Cabinet is responsible to the House.

**The Judiciary.** The Union has a Supreme Court consisting of a Chief Justice and a number of judges. There is an Appellate Division of the Supreme Court, consisting of the Chief Justice and four judges. The judges are appointed by the Governor-General and continue in office till the age of 70, removable only by a resolution of the Parliament. In each province, there is a Provincial Division of the Supreme Court. In all cases, both civil and criminal, the decision of the Appellate Division of the Supreme Court is final. But the Supreme Court does not possess the competence to interpret the constitution and declare any act of the Union Legislature invalid.

**The Provincial Governments.** Each of the four provinces is governed by an Administrator who is the head of the Provincial Executive. He is appointed by the Governor-General for five years and may be removed from office for causes assigned, which shall be communicated to the Legislature within a week. The Administrator is assisted by an Executive Committee, consisting of four members who are

chosen by the Provincial Legislature. They need not be members of the Provincial Council but have the right to attend its session. They are not responsible to the Legislature and hold office till the election of a new Legislature and selection of their successors. The Administrator presides over the meetings of the Executive Committee and has an ordinary as well as a casting vote.

Each Province has a Legislative Council which consists of a number of members equal to that elected by the Province for the House of Assembly. The minimum number of members is fixed at 25. Its duration is 3 years and it cannot be sooner dissolved. It elects its own Chairman to preside over the meetings. The Council enjoys limited law-making powers and even in this limited sphere, all its acts are subject to the approval of the Governor-General who may disallow any of them.

### **Amendment of the Constitution.**

The constitution is flexible like that of the Mother country. Article 152 of the constitution provides that the Union Legislature is competent to amend or repeal any of the provisions of the Act of Union subject to the following restrictions.

*Firstly*, the Union Legislature cannot amend or repeal any provision "for the operation of which a definite period of time is prescribed". This provision has now lost its importance in view of the fact that it was applied to the first Senate and the Assembly.

*Secondly*, the Union Legislature cannot change the following provisions of the constitution; viz, (i) qualification for voters to the House of Assembly, (ii) proportion of representation of provinces in the Union Legislature, (iii) modification of the rule that Dutch and English languages should be equally treated.

But these restrictions may also be removed if both the Houses of Legislature in a joint session pass a bill to that effect and the bill is agreed to at the third reading by a two-thirds vote of the legislature.

## Political Parties in the Union of South Africa.

(1) *National Party*. This party was organised by the followers of General Heitzog in 1940 and it soon rose into prominence. The leader of the party is Dr. D. F. Malan who is now widely known for his aggressive policy of racial discrimination. The party came into power in 1948. Its present strength in the Senate and the House of Assembly is 11 and 46 members respectively.

(2) *United Party*. This party was in power during the whole of the Second World War period and closely co-operated with Britain in successfully prosecuting the war. The leader was General Smuts whose firmness foiled the policy of neutrality advocated by General Heitzog during the last war.

Besides these, there are two other minor parties, viz. *Dominion Party* which advocates closer co-operation with the Commonwealth and *Labour Party* which seeks to safeguard the interests of workers by the maintenance of racial discrimination and state aid to industries.

## SUMMARY

The union came into existence by the South Africa Act, 1909.

### *Characteristics of the Constitution.*

- 1 Federal in form but unitary in substance
- 2 *Parliamentary*

### *Executive*

The constitutional head of the government is the Governor-General who is appointed by the King on the advice of the Union Cabinet.

### *Executive Council*

The real executive authority is vested in an executive council appointed by the Governor-General from among the majority party in the legislature. The Council, like the British Cabinet, is responsible to the legislature for its policy and action.

### *The Union Legislature*

The Legislature consists of two Houses, the *Senate* and the *House of Assembly*. The Senate consists of 44 members, eight members elected by each provincial council, eight nominated by

the Governor-General and four elected by the Natives The Assembly consists of 153 members elected for five years

The two Houses possess co-equal powers except that the Senate can neither originate nor amend money bills In case of disagreement between the two Houses, a Joint Session is convened by the Governor-General and the controversial issue is decided by a majority of votes

### *The Judiciary*

There is a Supreme Court which has an Appellate Division. Judges are appointed by the Governor-General In each province, there is a provincial division of the Supreme Court

### *Provincial Governments*

The Provincial governments consist of an Administrator appointed for five years by the Governor-General and a Legislative Council which is elected for 3 years The Provincial councils possess limited law-making power which is also subject to the approval of the Governor-General

### *Political Parties*

There are two principal political parties, namely, National Party and United Party of which the former is in power.

## QUESTIONS

1 "Dominion Status cannot be defined exclusively or indeed mainly, in terms of strict law" Discuss this statement  
(C U B Com 1954)

2 "So far as the making of their own laws are concerned, the Dominions are now absolutely free" —(Ogg)  
Examine this statement

3 Give a brief outline of the Constitution of the Union of South Africa  
(C U B Com 1957)

4 Comment on the position and powers of the State Governments in South Africa and Australia (C U B Com 1958)

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## CHAPTER VIII

### GOVERNMENT OF THE IRISH FREE STATE (EIRE)

#### *References :*

F A. Ogg—English Government and Politics, Ch  
XXXI

M Manseigh—The Irish Free State, Its Government  
and Politics

**Introduction.** The constitution of the Irish Free State contains many novel and interesting features for which it deserves more than passing notice by the students of comparative government. The Irish Free State was made a co-equal member of the British Commonwealth of Nations under the Treaty of 1921. This constitution is, however, operative over the twenty-six southern counties of Ireland. It does not apply to the six northern counties of Ulster which continue under the Act of 1920. In June, 1937, a new constitution was framed by the Irish Parliament and this was formally approved by the people by means of a plebiscite. The most remarkable feature of the new constitution is that it declares Eire to be a sovereign independent democratic state with rights to determine her own form of government and to shape her destiny according to her free will. The constitution makes no reference to the British Crown—a fact which proves unmistakably that the Free State severs all her connections with the Mother Country and that in no way she forms a part of the Commonwealth of Nations. The constitution also abolished the post of the Governor-General. The Irish Free State is the only Dominion which declared her neutrality during the last World War.

The constitution may be amended virtually by the ordinary process of law-making. Proposals for amendment made by the Dail are to be passed by both Houses, and in case of important proposals, they are to be referred to the people in a referendum.

**The Executive.** The office of the Governor-General

according to the old constitution, has been replaced by that of a President who is the head of the Executive of the State. The President who is also the titular Commander-in-Chief of the armed forces, is elected by the people for a period of 7 years. The constitution has vested in him enormous powers. He appoints the Prime Minister on the nomination of the Dail and other ministers on the advice of the Prime Minister. Generally, he is guided by the advice of the ministers but in certain cases, he may have consultations with the Council of State, consisting of the Prime Minister, his Deputy, the Chief Justice, Attorney-General, Chairman of both Houses and other distinguished citizens. The President has the power to refer a bill to the Supreme Court and may refuse his signature to the bill if the latter reports it to be unconstitutional. If the President is requested by a majority of the Senate and one-third of the members of the Dail to withhold assent from a bill of national importance, he may refer it to a referendum or general election. The President has no power to dismiss a ministry which commands the confidence of a majority in the Dail, but he may refuse to dissolve the Dail when such dissolution is wanted by a Prime Minister who does not command the support of the Dail.

The actual work of administration is conducted by the ministers who are responsible to the Dail for their policy and action.

**The Legislature.** The Irish Parliament is made up of two Houses,—The Senate called *Senad Eireann* and the *Dail Eireann*.

**The Senate.** The Free State has made a novel experiment in the creation of a Second Chamber. The plan was devised by a group of Irish leaders and not borrowed from any other country. It consists of sixty members of whom 11 are nominated by the Prime Minister, 6 are elected by the graduates of the two universities and the remaining 43 members are elected from five panels of candidates representing the following public services and interests: (1) National Language, Culture, Art, Literature, Education and such other professional interest, (2) Agriculture, Fisheries and allied interests, (3) Labour, (4) Industry and Commerce, including

Banking, Finance, Accountancy, Engineering and Architecture, and (5) Public Administration and Social Service. The Senate thus embodies the principle of vocational or occupational representation. The Senate sits for 7 years unless dissolved within 90 days after the dissolution of the Dail. The Senate has a suspensive veto over bills passed by the Dail. If the Senate withholds its assent from a bill duly passed by the Dail, the bill will become an act on the signature of the President after the lapse of 90 days or a bill may become an act immediately if it is certified by the Prime Minister to be an urgent measure provided the President signifies his assent to it. The Senate is therefore a revising body with advisory functions which it exercises with great moderation.

**The Dail.** The Dail consists at present of 147 members, elected by adult suffrage according to the system of proportional representation by means of single transferable vote. It sits for 7 years unless earlier dissolved by the President on the advice of the Prime Minister. The novel feature which distinguishes the Dail from all other Lower Houses is that it possesses the unique power of formally nominating the Prime Minister and also ratifying his choice of other ministers. The Dail exercises exclusive control over financial measures which automatically become acts after the lapse of 21 days from the date of their presentation to the Senate whether the latter approves them or not. The Dail controls the Cabinet.

**The Judiciary.** The Supreme Court which is the highest judiciary in Eire consists of a Chief Justice and a number of Judges, appointed by the President. The Judges are appointed without limit of time and cannot be removed before the retiring age except by resolutions of both Houses. The Court exercises original as well as appellate jurisdiction.

### Political Parties in Ireland.

(1) *Fianna Fail*. This is the party of the celebrated Eamon de Valera. It advocates a comprehensive programme for the economic development of the country including electrification. Though extremely nationalistic in its policy and programme, the party advocates friendly relations with Great Britain. In the 1948 election, the party secured 68 seats in the Dail.

(2) *United Ireland Party* This party is known as *Fine Gael* which has 30 members in the Dail. The party seeks close co-operation with Northern Ireland and advocates an all-round economic development of the country.

(3) *Farmers' Party* This party may be called the Socialist party of Eire, advocating a policy of planned economy which will ensure a minimum income for all citizens.

Besides these, there are two other parties, namely, *Labour Party* and *National Labour*, both of which advocate a socialist programme.

## SUMMARY

After an insurrection in 1916, the 26 southern counties of Ireland became independent of British rule and framed their own constitution which was amended in 1937 and adopted after a plebiscite in 1937.

*Characteristics of the Constitution.*

1 Unitary 2 Parliamentary.

*Executive*

The President who is elected directly by the people for seven years is the executive head of the state. He makes all appointments and is the head of the armed forces of the state. He signs and promulgates laws. He generally acts in consultation with the ministers and sometimes he may consult the Council of State. He has certain special powers on bills which he can refer to the Supreme Court or to a referendum.

*Ministry*

There is a Ministry headed by a Prime Minister, all of whom are appointed by the President on the nomination of the Dail from among members of the Dail. They can attend both the Houses.

*Legislature*

It consists of the *Senad Eireann* and the *Dail Eireann*. Of the 60 members of the *Senad*, 11 are nominated by the Prime Minister, 6 are elected by the universities and the remaining 43 elected on a vocational basis.

The *Senad Eireann* can initiate but cannot reject legislative proposals. It has been given 90 days time for examination of bills sent to it by the Dail. It can not originate money bills.

The *Dail Eireann* consists of 147 members elected for a term of 5 years. It is the more powerful House because (1)

it has control over money bills, and (2) it also controls the executive. The House may be summoned or dissolved by the President on the advice of the Prime Minister.

#### *Judiciary*

There is a Supreme Court which exercises both original and appellate jurisdiction. The judges are appointed by the President without limit of time.

#### *Party System*

Of the political parties, Fianna Fail is the most important. There are also a few other parties such as the Fine Gael, Farmers' party and others.

### QUESTIONS

1. Discuss the salient features of the Constitution of the Irish Free State.

2. What constitutes the executive in the Irish Free State? Discuss its relation to the legislature.

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## CHAPTER IX

### GOVERNMENT OF SWITZERLAND

#### *References :*

W E. Rappard—The Government of Switzerland

W. B Munro—The Governments of Europe, Ch 38.

R C Ghosh—The Government of the Swiss Republic

**Introduction.** The constitution of the Swiss Republic has the highest claim to be studied because the Swiss democracy is more truly democratic than in any other country in the world. The great lesson Switzerland teaches is how unity of traditions and institutions more than unity of blood, language and religion, may inspire a people with a strong national consciousness and develop in the common man the qualities that go to constitute a good citizen. It is this common consciousness, this superb sense of duty to the community on the part of the average man that has made it possible for Switzerland to contain a larger variety of institutions based on democratic principles than any other country.

Switzerland is a country which is smaller than the East Bengal district of Mymensing, wedged in between three of the biggest and most powerful nations, viz, France, Germany and Italy. The country is inhabited not by a single race but by a mixture of three races without any national language. The bulk of the population is of German extraction and speak German, while in some parts of the country French and Italian are the spoken languages of the majority. Religious uniformity is also conspicuous by its absence. But in spite of the lack of the cohesive forces which are commonly said to contribute to the growth of national solidarity, these four millions Swiss are a united people and form a nation in the true sense of the term. The most remarkable thing about the Swiss people is that they are perhaps the most patriotic people in Europe. They are a small but united nation whose national solidarity has remained unimpaired throughout the course of their chequered political history.

Till 1948, Switzerland was a loose confederation of 13 Cantons with no permanent Central government. The war of Sonderbund (1847) convinced the Swiss people that their confederation was weak and ought to be strengthened. A new constitution was therefore drafted and adopted in 1848. It transformed the country from a mere *staatenbund* into a real federation in which the national government of course did not get sufficient authority on account of the reluctance of many of the Cantons to surrender more powers to the national government. The movement for greater Federal centralisation slowly but steadily made headway and in 1874, the constitution was revised and the revised constitution which is in force today gave substantial powers to the Central Authorities.

**Characteristic of the Constitution.** The Swiss Republic today is a *federation* of 22 Cantons or to speak more accurately, 19 Cantons and 6 half-Cantons. These Cantons are declared to be sovereign in so far as their sovereignty has not been limited by the Federal constitution. The Swiss constitution resembles the U.S.A. constitution in this that the National government exercises only those powers which have been granted to it, the Cantons retain all the rest. The Cantonal governments are supreme within their own spheres subject to three limitations. *Firstly*, the Cantons must maintain a Republican form of government. *Secondly*, Cantonal constitutions framed by the Cantons themselves, can be amended only by popular vote and *lastly*, they must not contain any provision which is contrary to the Federation constitution.

But unlike the U.S.A., the constitution does not make a rigid division of subjects between the National and Cantonal governments. The National government exercises exclusive right to make war and peace, to contract treaties with foreign states, coin money and issue notes, control post and telegraph and railroads. The Swiss military system, based upon universal training is under its control. In addition, the Swiss Federal government exercises various concurrent powers with the Cantons in providing for public education and high ways, and in regulating the press, child labour, industries and in-

surance. In the exercise of concurrent powers, Federal laws prevail over those of a Canton.

The Swiss constitution, like the U S A constitution, is not only a grant of powers, but it also imposes certain prohibitions both on the Federal and Cantonal governments. Examples of prohibitions on the federal authority are that no person may be compelled to perform any act of religion or the freedom of marriage of a person cannot be curtailed on ground of his religious belief, etc. In the same way, the Cantonal governments cannot exercise certain powers, such as, no citizen can be expelled from the territory of the Canton nor can he be deprived of his citizenship except with his consent.

Although the distribution of powers in the Republic is in many respects similar to that of the U S A, there are striking differences as well. The U S A. constitution is marked by a rigid separation of powers between the federal authority and state authorities. In Switzerland, there is no such complete separation of powers between the Federal and Cantonal governments. There are certain fields of administration where the federal government legislates while the Cantonal governments give effect to the laws. For example, the federal legislature enacts civil law but the courts are organised and the judges are appointed by the Cantonal authorities. Again in case of disputes between the Cantons, it is the federal authority which decides that dispute and the Cantons are to submit to its decisions. But the Cantons in Switzerland do not enjoy the same immunity from federal interference in view of the fact that there is no Supreme Court of the U S A type in Switzerland which can declare a federal law null and void.

The Swiss constitution is a *written* document twice as long as the U S A. constitution and contains more minute details of the constitution than are usually found in the constitution of other countries. Though written, the constitution does not contain any bill of rights. But personal rights of citizens have been clearly and elaborately defined. The constitution guarantees equality of citizens before the law, freedom of belief and conscience, freedom of religion and free-



dom of thought and expression. The Swiss constitution is peculiar in another respect, namely, that it does not formally define citizenship but provides that the citizen of a Canton is also a citizen of the Swiss Republic. As in other countries, the constitution, though mainly written, contains many unwritten elements. As for example, the right to determine the rules of naturalisation is vested in the National government but in practice, the rules are determined by each Canton.

The constitution is rigid. Though rigid, process of amendment is easier.

The Swiss constitution possesses two other unique features which have made it a class by itself. *Firstly*, it is the only constitution in the world which provides for the establishment of a *plural executive*. *Secondly*, it gives the people direct control over legislation through devices like the *referendum*, the *initiative* and the *recall*. It has at least partially realised the ideal of a government by the people.

### **The Federal Executive : The Federal Council.**

The most remarkable feature of the Swiss Executive is that it is a plural collegial body. The executive power of the Republic is vested in the Federal Council, composed of seven members, elected for four years by a joint session of the two Houses of the Federal Legislature. Members are eligible for re-election and as a matter of fact some members have held office as long as 32 years. The members of the Council are irremovable within their term of office. They are usually elected from amongst the members of the Legislature, although there is no legal bar to the election of members from outside. Not more than one member can be chosen from the same Canton and not more than five from the German-speaking Cantons. The Federal Legislature annually elects two members of the Council as President and Vice-President respectively. The constitution provides that the President for one year cannot be re-elected next year. The usual practice is that the Vice-President of one year is elected President for the next year and it is in this way that the office of the President passes on to every member of the Council by

rotation. The President bears the title of 'President of the Swiss Confederation' but he has no more powers than his colleagues excepting as the ceremonial head of the Swiss Republic. He is a head without powers and as such he has no more responsibility than the other councillors.

### **Powers and Functions of the Council.**

As the supreme executive of the republic, the Federal Council maintains law and order within the country and is especially charged with the duty of protecting the neutrality and integrity of the country in times of war between its powerful neighbours. It regulates foreign affairs, makes some important appointments and directs and controls the work of the Federal offices.

The Council has some legislative functions. Though the members have not the right to vote, they can attend the sessions of the Legislature, initiate bills and frame the budget. As a matter of fact, most of the important bills are drawn up by the Council either on its own initiative or at the request of the legislature. They are also subject to interpellations in both the Houses. Finally, the Council exercises some judicial functions inasmuch as it acts as an Administrative court in certain cases.

### **Peculiarities of the Swiss Executive.**

The Federal Council meets twice a week at Berne. Members of the Council may freely speak and oppose one another openly. Decisions are made by a majority of votes, the President who is the Chairman, having a casting vote in case of a tie. The peculiarity of the Swiss executive is that it is not only collegial but also not responsible to the legislature in the sense that they are not to resign in case of their policy being disapproved by the legislature. The Council submits to the legislature and continues in office even when measures adopted unanimously by the Council are turned down by the legislature.

Thus from one point of view, the Swiss Federal Council is parliamentary and from another point of view it is presidential in form. It is parliamentary in the sense that the members of the Council are drawn mainly from the legisla-

ture which elects them. The members of the Council have the right to be present in the legislature, can take part in debates, introduce bills and in general may be said to carry out the will of the legislature. It is presidential in the sense that the members of the Council are not members of the legislature. As soon as they are elected members of the Council, they are to resign their membership of the legislature. They are not removable by the legislature within the term of their office which is fixed. Thus the Swiss system combines the merits of both the British and the U.S.A. types of executive. It has combined stability with responsibility. The combination of stability with responsibility has made the system remarkably efficient.

Another important feature of the Swiss executive is that unlike in Great Britain and the U.S.A. the Swiss executive is not formed on party basis. Members are drawn from various party-groups fundamentally opposed to one another. In its function, the Swiss executive is non-partisan in character and has developed such as an *esprit de corps* that the occasion for resignation of an individual Councillor does not arise at all. Its popularity is apparent from the fact that on the expiry of the four years term, the old Councillors are generally re-elected by the legislature if they are willing to serve.

We may conclude with the observation of Viscount Bryce who in admiration of the system of executive in Switzerland says, "It provides a body which is able not only to influence and advise the ruling Assembly without lessening its responsibility to the citizens, but which, because it is non-partisan, can mediate, should need arise, between contending parties, adjusting difficulties and arranging compromises in a spirit of conciliation. It secures continuity in policy and permits traditions to be formed."

**The Federal Legislature.—The National Assembly.** The Federal Legislature, called the National Assembly, consists of two Houses,—the Council of States and the National Council.

*The Council of States*—The Swiss Upper Chamber bears a superficial resemblance to the U.S.A. Senate, but the resemblance is more apparent than real. The Council of States is

composed of two members from each regular Canton and one from each half-Canton—forty-four members in all. These forty-four members are chosen in such manner and for such terms as each Canton may decide. Thus in some Cantons, the members are elected by the Cantonal legislatures; in others by the votes of the people. The terms also vary from one to four years. The salary of the members is paid by the Canton. Unlike the Senate of the U.S.A., the Swiss Council of States possesses no special powers of any kind. In theory, it possesses the same range of authority as the Lower Chamber but in practice, it is definitely less powerful than the Lower House.

*The National Council*—The Lower House consists of about two hundred members elected from the various Cantons by proportional representation. The number of members each Canton may elect, depends on its population.

But a Canton, however small, must send at least one representative. Berne, the biggest and the most populous of Cantons, sends 31 members. There is manhood suffrage. Every male Swiss citizen who has completed his twentieth year has the right to vote. The House sits for four years. One peculiarity of the Swiss National Council is that it allows officials of the Cantonal governments to sit in the House as members.

The two Chambers possess equal powers in legislative, administrative and in judicial matters. But in practice, the Lower House is more powerful than the Upper one which does not generally oppose the will of the Lower House. In case of a friction between the two, it is settled by popular referendum.

The Swiss National Assembly is the depository of the supreme power of the Republic, subject to the limitations of the constitution. The first limitation arises out of the fact that it cannot drive away the Executive—the Federal Council from office. Secondly, its powers are limited by the powers of direct legislation by the people. In certain cases, bills passed by the Legislature must be submitted to a referendum and approved by a majority. In other cases, a referendum is to take place when it is demanded by the required number of

voters Its power to say the last word in legislative matters has also been curtailed by the device of the initiative through which a certain number of voters may, by petition, propose some legislation and ask the Legislature to consider it and to submit to the votes of the people

The Legislature passes laws, prepares the budget and ratifies treaties Its consent is necessary for making war and peace The two chambers sit separately, but they may hold joint meetings for transacting the following businesses (a) election of the high officials of the confederation including the President, the Vice-President, the Judges of the Federal Court and the Commander-in-chief of the federal defence forces, (b) for the determination of legal questions and (c) for granting pardons for which a joint session is held twice a year There is little scope for the committee system in Switzerland

**Relation between the Executive and the Legislature.** Both the Executive and the Legislature have been so modelled in Switzerland as to ensure the advantages of both Parliamentary and Presidential systems of government, at the same time avoiding their defects Strictly speaking, the Federal Council cannot be regarded as a cabinet in the sense in which the word 'Cabinet' is used in England There is no ministerial responsibility—no collective responsibility of the ministers to the Legislature The Council is not affected by a disapproval of its policy by the Legislature It simply readjusts its policy according to the will of the Assembly and continues in office The Federal Council usually acts as a body, though it lacks the political homogeneity which is an essential feature of the Cabinet form of government Members are chosen from different parties and may hold or even express differences of opinion in the Houses As the Councillors are not removable during their four years' term and as they are re-eligible, the Swiss Executive has proved to be very efficient in administration and has secured continuity of policy

**The Federal Tribunal.** There is a Federal Tribunal consisting of 24 judges with 11-13 supplementary judges appointed by the Federal Assembly in a joint session for six

years. In practice, however, the judges are re-elected and hold office so long as they desire to serve

The Court has both original and appellate jurisdiction. It has original jurisdiction in trying all civil suits between the Federation and the Cantons, or between the Cantons. Its appellate jurisdiction extends to cases referred to it by Cantonal courts. It also tries cases of treason against the Federation. It exercises criminal jurisdiction with a jury of twelve. The Federal Court has also been empowered to nullify a Cantonal law on the ground that it is in conflict with the Federal constitution or with Federal laws. It has, however, no power like the U.S. Supreme Court to declare a federal law unconstitutional. Since 1928, the Federal Tribunal is acting as the Administrative Court for settling the disputes between private citizens and public officials.

**Amendment of the Constitution.** The constitution is rigid. It may be amended in two ways. *Firstly*, a proposal for amendment may be made by the Federal Assembly. The proposal must be passed by both the Houses and submitted to a referendum of the people. If the proposed amendment secures the approval of a majority of the voters as well as a majority of the Cantons, it will become valid.

*Secondly*, proposals for amendment may emanate from fifty thousand voters who may submit a draft of the proposed amendment to the Federal Assembly. The Legislature may approve or disapprove the proposed amendment, but in any case, it must submit the question to a popular referendum. If the proposal is supported by a majority of voters in the majority of the Cantons, the amendment will be valid.

**Swiss Local Government.** In each of the Cantons, there is a *Grand Council* elected by the voters of the Canton. The Grand Council is the Legislature of the Canton whose legislative powers are also limited by the use of the referendum and the initiative in Cantonal matters. The Cantonal executive consists of an Administrative Council of five or seven members, all of whom are elected by the people of the Cantons. In four of the smaller Cantons, viz., Appenzel, Uri, Glarus and Unterwalden, direct democracy is in actual

practice. Each of these Cantons is administered by a General Assembly of all adult male citizens of the Canton. The Assembly meets once a year to decide important legislative, administrative and financial matters of the Canton. The Assembly elects a small council of five members which carry on the actual work of administration throughout the year in accordance with the policy formulated by the Assembly in its meeting.

The Cantons contain towns, cities and villages, all called Communes. There is an elective municipal council in the bigger communes but in the smaller ones, the work of the local government is conducted by town-meetings.

The study of the Swiss Constitution will be incomplete, if mention is not made of its peculiar military system. Switzerland is a neutralized state and therefore it cannot maintain a standing army. But every citizen is bound, according to the terms of the constitution, to render military service, thus making military training compulsory and universal. It can therefore mobilize its entire adult manhood for defence purposes.

For Referendum, Initiative, See Ch. XI, Part I

### **Political Parties in Switzerland.**

(1) *Social Democratic Party* It is a party composed of members from trade unions with Socialist bias. It advocates wider state control in economic matters. It has a total numerical strength of about 60 members in both the Houses of legislature.

(2) *Progressive Democratic Party* The followers of this party are drawn mainly from middle class people. It advocates a policy of extension of social legislation and strengthening of national defence.

(3) *Catholic Conservative Party* It is a party of clerical federalist group, advocating religious freedom and social legislation.

(4) *Peasant Party* The party seeks to promote agricultural interest and advocates a thorough agrarian reform.

Besides these, there are about four or five minor parties, such as the *Swiss Labour Party*, the *Independent Party*, the *Liberal Democratic Party*, etc. Of these, the labour party represents the left wing, advocating nationalisation of all important industries, women franchise and improvement of the conditions of working classes

### Characteristics of the Swiss Federal System.

Although like all other federations, the Swiss federation is based upon a clear demarcation of powers between the federal and cantonal spheres, the constitution refers to it as a confederation

*Secondly*, both in the USA and in Switzerland, residuary powers rest with the units but many of the federal subjects are administered by the governments of the Cantons quite contrary to the system prevailing in the USA or in India

*Thirdly*, the Upper House of the Swiss federal legislature presents a unique feature so far as its composition is concerned. The Council of States as it is called is composed of two representatives from each regular Canton and one from each half-Canton—forty-four in all. But these forty-four members are chosen in such manner and for such terms as each Canton may decide. The term of office of the members also vary from one to four years. The salary of the members is also paid by the Cantons. Such a practice lacking in uniformity is not to be found anywhere else.

*Fourthly*, another noticeable feature of the Swiss federal system is its plural executive. The executive authority in Switzerland is vested not in one person as in the Prime Minister in England and India or in the President in the USA but in a body of seven persons called the Federal Council. All these members are elected by the two Houses of the Federal legislature in a joint session. The Federal Council annually elects one member of the Council as the President of the Confederation but the President has no more powers than his colleagues excepting as the ceremonial head of the Swiss republic.



*Fifthly*, the Swiss federation differs from other federations in respect to the powers of the federal legislature which accounts for the comparative weakness of the federal judiciary. The federal tribunal unlike federal courts in other countries cannot declare a federal law unconstitutional but it has the competence to invalidate a Cantonal law if it is at variance with the constitution-federal or Cantonal.

The *last* though not the least in importance is the characteristic which confers upon the people the right to question a law passed by the federal legislature. A federal law may be required to be submitted to a popular referendum if demanded by thirty-thousand voters in a petition. The law may be valid if approved by a simple majority of votes actually cast. Popular referendum in Switzerland has thus made Switzerland 'a real democracy in operation' by effectively checking executive or legislative tyranny.

## SUMMARY

Switzerland is a small country consisting of 22 Cantons which were originally not united. A treaty of alliance between the Cantons brought the Swiss confederation into existence in 1874.

### *Characteristics of the Constitution.*

1 It is federal, residuary powers being vested in the Cantons.

2 It is written and generally rigid. Though rigid, process of amendment is easier.

3 It provides for a plural executive of a non-partisan character, combining the principles of both parliamentary and presidential forms of government.

4 It gives the people direct control over legislation through devices like the referendum, initiative, etc.

### *The Executive—the Federal Council*

The Executive is a plural collegial body consisting of seven members elected by the two legislative chambers for four years term. There is a President and a Vice-President both of whom are elected by the Federal Assembly for one year and in this way each of the seven members becomes President and Vice-President by rotation. Councillors are politically neutral and can speak on either side. They are drawn from different party groups but they act with perfect harmony with one another.

They are the heads of various departments, formulate policy, and initiate laws but they do not resign even when their policy and action are disapproved by the legislature. In practice, the Swiss system has combined efficiency with stability of government.

### *Legislature*

The legislature called the National Assembly consists of two Houses—the Council of States and the National Assembly.

The *Council of States* consists of 44 members, two from each canton. The mode of their election and term of office are fixed by the Cantons which they represent.

Theoretically, it possesses equal powers with the Lower House but in practice, it has no special power like the Senate of the U S A.

The *National Council*, the lower chamber, consists of about 200 members, elected for a term of four years on the basis of adult manhood suffrage. The two Houses together form the Federal Assembly and represent the supreme government of the Republic.

### *Federal Judiciary*

The Federal Tribunal is the Supreme Court consisting of 24 judges with a number of supplementary judges, all of whom are appointed by the Federal Assembly for six years and may be re-elected.

The court has both original and appellate jurisdiction. It can nullify a Cantonal law but cannot declare a federal law invalid. It also acts as an administrative court.

### *Amendment of the Constitution.*

The constitution may be amended either (1) by a proposal passed by the Federal Assembly and when such proposal is ratified by a majority of voters in a referendum and also by a majority of Cantons, it becomes valid or (2) the proposal for amendment is to be initiated by fifty thousand voters and to be placed before the Federal Assembly which, irrespective of its approval or disapproval, must submit it to a popular referendum and if passed by a majority of voters in a majority of Cantons, the proposal will stand amended.

### *Political Parties*

There are too many parties in Switzerland but no party-feeling between the parties. The Social Democratic Party, Progressive Democratic Party, Catholic Conservative Party are the most important.

## QUESTIONS

- 1 Discuss the peculiar features of the Swiss Constitution  
(C U 1954 )
  - 2 Discuss the position and functions of the Federal Executive in the Swiss Constitution  
(C U 1955 )
  - 3 Describe the main features of the Swiss Federal Executive  
(C U 1957 )
  - 4 How far do you agree with the view that the Swiss system of Government combines the merits and excludes the defects of "both the parliamentary and non-parliamentary executive systems"  
(C U Hon 1957 )
  - 5 "Real democracy in operation"  
How far is this characterisation true of the Swiss Constitution?  
(Madras 1937 )
  - 6 How far are the Referendum and the Initiative desirable and practicable in a modern democracy? (C U Hon 1958 )
  - 7 State the main features of the Swiss system of Government  
(C U 1958 )
  - 8 Explain how the Swiss constitution provides for direct popular legislation  
(C U 1959 )
  - 9 Point out the characteristic features of the Federal Council of Switzerland and discuss its position in relation to the Federal Assembly  
(C U 1960 )
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## CHAPTER X

### GOVERNMENT OF THE U.S.S.R.

#### *References .*

S and B Webb—Soviet Communism A New-Civilisation

A. L. Strong—The New Soviet Constitution

F. A. Ogg—European Governments and Politics, Ch. XLV.

M N. Saha—My Experience in Soviet Russia

Carter, Ranney and Herz—The Government of the Soviet Union, Chs 3—5, 10

**Introduction.** There are people who still entertain an erroneous idea about Russia in so far as they regard the country as a nation in the sense that England or France is a nation. Even during the reign of the Tsars, the country was made up of at least ten quite distinct geographical areas, inhabited by people who differed from one another not only in speech and religion but in race as well. The vastness of the country, the diversity of races included in it, the illiteracy and ignorance of the people, their oriental traditions and rural type of civilisation—all of which favoured the growth and maintenance of a despotic government in Russia. The people groaned under abject poverty, oppression and repression.

The partial industrialisation of the country during the latter half of the nineteenth century created a class of politically conscious proletariat who formed the nucleus of the great changes that overtook the country in the years to come. The proletariat cause was very ably upheld by a group of intellectuals who organised the Social Democratic Party. Subsequently this party broke up into two groups—the Bolsheviks (Majority) and the Mensheviks (Minority). The Bolsheviks were revolutionary socialists who insisted upon a wholesale change in the policy and programme of the

government The Mensheviks wanted progressive reforms through evolutionary process.

Popular resentment and discontent were at their heights when Russia suffered a crushing defeat in the hands of Japan in 1904-05. A revolution on a small-scale took place in 1905 which prepared the ground for the great upheaval of 1917-18. The Tsar could read the signs of the time and tried to allay the growing popular discontent by introducing certain constitutional reforms which, however, were far behind the time. The revolutionary movement, slowly but steadily, gained ground, in spite of its stern repression by the Tsarist police and the military. The outbreak of the First World War hurled Russia headlong into a crisis which proved the utter incompetence of the Tsarist rule which was replaced by a Provisional Government. The Tsar was made to abdicate and later on met the same fate as befell Charles I of England and Louis XVI of France. During this turmoil, Lenin, the guiding star of the Russian Revolution and the maker of modern Russia, returned from his exile through the good offices of the German Government. Lenin's arrival at this critical juncture gave a new turn to the situation which was already turning from bad to worse. Lenin vigorously led his party into action by raising the slogan, "All powers to the Soviets" which were councils of 'workers', peasants' and 'soldiers' deputies formed in the principal industrial centres during the Revolution of 1905. The Soviets rallied round Lenin who placed before them a definite programme which the people could readily understand. The task of Lenin and other Bolshevik leaders had become easier owing to the fact that the workers had already seized the factories and the peasants had taken the land as their own by driving out the landlords. The Provisional Government which was set up on the abdication of the Tsar was replaced by an equally weak and incompetent one under Kerensky. The Bolshevik party, with the help of the military, was able to seize the government by overthrowing the Provisional Government.

In the summer of 1918, the All-Russian Congress of Soviets assembled and adopted a constitution which was prepared by the Communist leaders. During the revolutionary

period, certain parts of Russia declared their independence and set up their independent governments but by the year 1922, they wandered back to their original fold and still form part of the great Socialist Republic. In 1923, a new constitution was drafted and it was ratified by the Constituent Republics. The Constitution created a Union of Soviet Socialist Republics—the most remarkable thing being the absence of the word 'Russia' in the nomenclature of the new state.

**Characteristics of the Constitution.** The present government of the country is based on the constitution of 1936 which is the third in order of succession and is popularly known as the Stalin constitution. The Stalin constitution is based on the *federal principle*. The new constitution declares the state to be a *Socialist Republic* comprising fifteen Autonomous Republics, viz., 1. Russian Soviet Federative Socialist Republic (R.S.F.S.R.), 2. Ukrainian S.S.R., 3. Byelorussian S.S.R., 4. Azerbaijan S.S.R., 5. Georgian S.S.R., 6. Armenian S.S.R., 7. Turkmen S.S.R., 8. Uzbek S.S.R., 9. Tadzhik S.S.R., 10. Kazakh S.S.R., 11. Khirgiz S.S.R., 12. Moldavia S.S.R., 13. Estonia S.S.R., 14. Latvia S.S.R., 15. Lithuania S.S.R. Formerly, there were 16 republics including the Karelo-Finnish Republic which was merged with the Russian Soviet Republic. Besides the fifteen union republics, the U.S.S.R. includes three distinct categories of subunits, viz., *autonomous republic*, *autonomous regions* and *national areas*. The *first* comprises territories within the union republic inhabited by smaller national minorities, each of which is entitled to have its own constitution which fully safeguards all minority interests. *Secondly*, autonomous regions are organised on the basis of racial groups which are not considered so important as to form an autonomous republic. Any racial group which claims to possess distinctive cultural characteristics of its own is entitled to some measure of autonomy. *Lastly*, the lowest rung of the racial group is formed by national areas which are generally very small in size. Each of the three categories of subunits has been given separate representation on the Supreme Soviet at the rate of eleven, five and one representatives respectively.

The most important feature of the federation is that the Constituent Republics have been granted the right to secede from the Union. Another distinguishing mark of the Soviet Union is that it recognises the right of the Constituent Republics, at least of some of them, to be separately represented on International Congresses and Conferences. Thus the Republics of Ukraina and Byelorussia were accorded separate representation on the UN. The federal principle has also been enforced in the composition of the second chamber, the Soviet of Nationalities, in which each republic is represented by 25 members irrespective of its size and population.

Though federal in form, the constitution, on a closer examination, appears to be a highly centralised one with little administrative and legislative autonomy left for the Constituent Republics which, of course, enjoy some amount of cultural and economic autonomy. As a matter of fact, the Central Government of the USSR enjoys powers far wider than those of the national governments of the U.S.A. or Australia or Switzerland. The authority of the Federal or All-Union Government extends over subjects like foreign affairs, foreign trade, defence and direction of all the armed forces, taxation, transport and communication, national economic planning, money and credit, banking, social insurance, administration of Justice, establishment of the fundamental principles in the domain of education and public health, laws regarding citizenship of the Union. This formidable list of powers entrusted to the Federal government has effectively limited the scope of the Constituent Republics. The Constituent Republics have been given the legal right to secede from the Union but this and similar other rights seem to be rights on paper only. These rights are quite incompatible with the constitutional provisions that the Federal government possesses the right to confirm the taxes imposed by the Constituent Republics or that it has the power to determine basic principles in the domain of education and public health which apply throughout the Union. Besides, the centralised character of the government is obvious from the fact that the whole machinery of the government is controlled by the Communist Party whose leaders are the Ministers and it is the

Ministers who exercise the power. As a matter of fact, there is no separation between the government and the party and as such, the whole work of the government, Federal or Republican, is controlled by the party. Practically speaking, the same set of persons govern the Union as well as the Constituent Republics. The federal principle has also been weakened by the provision that in case of a conflict between a law of the All-Union and that of a constituent republic, the former will prevail over the latter.

Another characteristic of the constitution is its *economic provisions*. The economic foundation of the USSR is the Socialist system of economy and the Socialist ownership of the means of production and the abolition of the exploitation of man by man in accordance with the principle, "He who does not work, neither shall he eat."

Another striking feature of the Soviet constitution is that it has made elaborate provision for *fundamental rights* which the constitution not only guarantees but also makes real by providing for the material means for enjoying such rights. Again the Soviet constitution reveals another unique feature, namely, it does not rest content only with the enumeration of fundamental rights, it also demands certain duties from the citizens. In this respect, the Soviet constitution is perhaps the only constitution which is based upon the principle of reciprocity between the government and the citizens.

Unlike in other countries, the two chambers of the Soviet legislature have *equal powers* even in respect to finance. The initiative in legislation belongs equally to the two Houses and a law is deemed to have been passed if passed by a simple majority.

The Soviet constitution differs from other constitutions in respect to the organisation of its executive. In other countries, the executive Head generally appoints the members of the ministry but in the Soviet Union, the members of the Council of Ministers are elected along with the Chairman by the Supreme Soviet, *i.e.*, the legislature. Another peculiar feature of the organisation of the executive is that the Coun-



cil of Ministers consists of two sets of ministries—(1) the All-Union Ministers who carry on their work entrusted to them throughout the territory of the Soviet Union and, (2) Ministers of the Union Republics who are to carry on their work through the corresponding ministries of the Union Republics.

Another important innovation of the constitution is the *Presidium*—a body consisting of thirty-three members elected by the Supreme Soviet and continuing in office until the election of a new Presidium. Though the function of the Presidium is primarily legislative, it also performs executive and even judicial functions. The power to interpret Soviet laws and to examine and annul the decisions of the executive is also vested in the Presidium.

The *organisation of the judiciary* forms another important feature of the constitution. The Soviet judiciary is elected and in the administration of justice, People's Assessors play an equally important part along with the regular judges. But the Soviet judiciary has no power to declare the Union law unconstitutional.

Another peculiar feature of the constitution is that the government is based on *one-party system* which does not tolerate any difference of opinion. This one-party government has been the subject-matter of great controversy.

### **Fundamental Rights and Obligations of the Soviet Citizens**

It is a well-known fact that the constitution of a country not only enumerates but also guarantees to its citizens a number of fundamental rights. But the fundamental rights enumerated in the Soviet constitution include certain rights, parallel of which have not so far found place in the constitution of any other country. In addition to the enumeration of usual civil and political rights which all constitutions guarantee to their citizens, the Soviet constitution has also guaranteed the material means by which the rights may be made available to its citizens. Thus the constitution includes rights such as the right to work, the right to rest and leisure, the right to material security in old age, and the right to education.

The rights guaranteed to the citizens may be briefly enumerated as follows

(i) *Right to work* This means that the constitution guarantees employment to all citizens and the solution of the problem of unemployment has been possible because of the planned basis of the Soviet system of economy which is based on the socialistic system of the means of production and distribution

(ii) *Right to rest and leisure.* This right has been ensured to the citizens by the reduction of the number of hours of work, by making provisions for leave with full pay and by the establishment for workers numerous rest-houses, sanatoria and clubs

(iii) *Right to education* The progress made by the Soviet Union in its campaign for literacy and the result so far achieved have aroused the admiration of people all over the world. Primary education is universal and compulsory in the Soviet Union. Facilities for higher education including university and professional education are given practically to all classes of citizens. Formerly education of all varieties was free but since 1940, tuition fees are charged above the stage of primary education

(iv) *Equality of rights regardless of nationality, race and sex* One of the leading features of the new constitution is that it makes provision for the equal rights of its citizens irrespective of race, sex and nationality. It is a remarkable achievement of the Soviet government that it has given the fullest opportunity to the national minorities living within the Union to preserve their national characteristics by giving them representation in the second chamber and by helping them to develop their script and languages numbering as many as 110. Women also have been placed on a footing of perfect equality with men in all spheres of life

(v) *Freedom of conscience* The constitution has granted to the citizens the freedom of religious worship and anti-religious propaganda. The right to vote has been granted to all citizens irrespective of race or religion. The Soviet government has changed its original attitude towards the church which was separated from the state. Since the time of the

Second World War, the attitude of the government is marked by an increasing toleration of religion

(vi) *Freedom of speech and expression* This is a right which is considered as one of the most important rights in all countries. The Soviet constitution also guarantees these rights to its citizens subject to the condition that they are to be exercised "in conformity with the interests of the working people". The opponents of the Soviet system points out that such freedom cannot be real in a country where the government is based on one-party system which does not allow other parties to exist. Besides, it is the government which controls the agencies that mould public opinion such as, the press, the radio, the cinema, etc.

(vii) *Personal freedom and the inviolability of Homes.* No person may be arrested except upon the decision of a court or with the permission of the prosecutor. In the same way, inviolability of homes of citizens and secrecy of correspondence are protected by law. Many critics have expressed doubts as to the real nature of these rights. Persons even suspected of disloyalty to the state or to the party or persons saying or doing anything contrary to party policy are freely arrested and severely dealt with by the government.

(viii) *Right of asylum* The Soviet constitution grants this right to foreigners, not only to those who have been persecuted for defending the interests of the working people but also to those persecuted for scientific activities or for activities in connection with national liberation.

(ix) *Freedom to form organisation* Citizens of the Soviet Union are allowed to form various associations like the Trade-Union, Co-operative Society, Youth Organisation, Defence Organisation, Scientific Societies and the like but it is curious that they are not permitted to form any political organisation. The Communist Party is the only party in the whole country under whose banner all citizens must rally.

Although *the right to property* has found no place in the chapter on the Fundamental Rights, the Stalin constitution conceded to a great extent the right to property. Three forms of property, viz, state property, co-operative and collec-

tive farm property and lastly personal property have been recognised by the constitution. The citizens have been guaranteed the right to personal property—"in their incomes and savings from work, in their dwelling houses and subsidiary home enterprises, in articles of domestic economy and use and articles of personal use and convenience, as well as the right of citizens to inherit personal property" Thus, the Soviet citizens can enjoy private property but it must be solely for their own use.

**Fundamental Duties.** The Stalin constitution imposes upon the citizens a number of duties. Every citizen is required to abide by the law and the constitution and also to protect and fortify public socialist property. Military service in the defence of the Fatherland is an honourable and sacred duty of the Soviet citizen which implies the legal obligation of the citizens to undergo military training and to serve in the army. Treason to the Fatherland, espionage on behalf of a foreign state, desertion from the army and similar other acts of disloyalty to the state are regarded as worst crimes and dealt with great severity.

**The Executive—Council of Ministers.** The highest executive and administrative organ of State power of the USSR is the Council of Ministers, called People's Commissars before March 16, 1946. It is a curious fact that there is no titular head in the Soviet Union as is to be found in other countries. Unlike in other countries, the Ministers are chosen by the Supreme Soviet or Legislature at a joint session of its two chambers. But really speaking, the Ministers are chosen by the Central Executive of the Communist Party whose decision is formally given effect to by the Supreme Soviet. The Council of Ministers consists of about 62 members, of whom one acts as the Chairman whose position is almost identical with that of a Prime Minister. Since the time of the Nazi invasion of the USSR, M. Stalin himself assumed the office of Prime Minister as well as the Minister of Foreign affairs. The Council is composed of *two* classes of Ministers—All-Union Ministers and Union Republic Ministers. The former administer the Federal subjects like defence, foreign affairs, railways, heavy industries etc. while the latter co-

ordinate and regulate the work of the departments entrusted to the control of the Union Republic. Each minister is aided and advised by a small body of advisers. The Council of Ministers is composed of the following members: (1) The Chairman of the Council of Ministers of the U.S.S.R., (2) the Vice-Chairmen, (3) the Chairman of the State Planning Committee of the Council of Ministers of the U.S.S.R., (4) the Chairman of the State committee of the Council of Ministers on the material and technical supply of the national economy, (5) the Chairman of the State committee of the Council of Ministers of the U.S.S.R. on construction, (6) the chairman of the Arts committee, and (7) the Ministers of the Soviet Union. Besides, the Soviet Government maintains a large variety of advisory boards of which the Commission of Soviet Control and the State Planning Commission, the Supreme Council of Defence are the most important.

### Functions of the Council of Ministers.

Article 68 of the Constitution enumerates the powers of the Council of Ministers which are more extensive than those to be found in other countries. They comprise

- 1 Direction and co-ordination of the All-Union and Union Republican Ministries, and of other institutions under the jurisdiction of the federal government

- 2 Taking of necessary measures for the proper execution of the State budget and the national economic plans. The Council is also required to devise means and take necessary steps for the strengthening of the country's credit and monetary system.

- 3 Maintenance of public order and defence of the country, the protection of the interest of the state, and the rights of citizens

- 4 Direction of the general organisation of the armed forces of the country and fixing of the annual contingent of citizens to be called up for military service

- 5 Exercising general guidance in the sphere of relations with foreign state

6 Creation of special committees, commissions, and other administrative organs to deal with economic, cultural and military matters

7 To issue decisions and orders on the basis of All-union laws and to verify their proper execution, the orders and decisions of the Council of Ministers being binding throughout the territory of the union

8 To suspend the executive orders of the Union Republics if such orders, in the opinion of the Council, are inconsistent with the federal laws or decrees

9 To issue orders and instructions, within the limits of their respective ministries, on the basis of All-union laws and in pursuance of the orders and decisions of the Council of Ministers

10 To suspend decisions and orders of the Council of Ministers of the Union-Republic and to annul orders and instructions of Ministers of the U.S.S.R. in respect of the All-union branches of administration and economy

It is apparent from the long list of the Soviet ministry that the economic activities of the country are entirely under state control. There are more than 30 ministries only to look after the industrial development of the country. In other countries ministers are generally men of high administrative ability but the Soviet ministers are not only administrators but at least many of them must also be captains of industries. As the foundation of the state is based on the Socialist system of economy, the ministers are specially charged with the duty of controlling production, exchange, distribution and consumption.

### **The Ministry of State Control**

The constitutional amendment of 1947 provided for a Ministry of state control in place of the old Soviet Control Commission. Curiously enough, this ministry constitutes an autonomous body, its members, unlike those of the Ministry, are nominated by the Central Committee of the Communist Party. The main function of this Ministry is to exercise supervision over all state organs and their activities.

### **The Inner Cabinet.**

The size of the Soviet Ministry is so large that it is impossible for this body consisting of about 60 members to take quick decision and prompt action. So during the Second World War, a sort of an inner cabinet was formed for the successful prosecution of the war. It then consisted of about 10 members under the name of State Committee for Defence. After the conclusion of the war, the Committee for Defence was transformed into the present inner cabinet consisting of the Chairman of the Council of Ministers and the Vice-chairmen. The inner cabinet consists of the top-ranking Communist leaders, almost all of whom are members of the Politbureau. It is this body which formulates all important policies of the state.

### **Ministerial Responsibility in the Soviet Constitution.**

The Soviet constitution provides that the Council of Ministers is to be appointed by the Supreme Soviet and it will be responsible and accountable to the Supreme Soviet, but in the intervals between its sessions, the ministry will be responsible to the Presidium. It has been further laid down in the Constitution that if any member of either House of legislature ask any question to any minister, the minister concerned must give either a verbal or a written reply within three days. These provisions seem to prove that the principle of ministerial responsibility works in the USSR in the same way as in Great Britain or in any other country having a parliamentary system of government. But really speaking, there is a wide divergence between Soviet practice and practice in other parliamentary governments. The most remarkable feature of the Soviet government is that it is a one-party government which does not allow any other party to exist,—let alone any opposition. In other countries, there are active oppositions which are given not only full opportunities for criticism of the policies of the party in power but are also consulted on matters of vital interest to the state. But in the USSR, one party rules and the same set of men rule the country in different capacities. So the question is if democracy can function successfully under one-party government.

It is pointed out by the critics of the Soviet system that no Soviet Ministry has up till now resigned on an adverse vote of the legislature or that there is no difference between the party and the government, the same set of people ruling the country without any opposition. All these are true with regard to the Soviet System of government which is characterised as a dictatorship of one party only. To this, the Communists reply that the Soviet state is a classless state and the state works for the common interests of all its citizens. The existence of diverse political parties is, according to them, a proof positive of the class struggle which seeks to establish the supremacy of one class over others. In this scramble for power, the most dominant party establishes its sway over weaker parties and enacts laws and formulates policies which simply reflect class interest. Opposition is allowed to exist but it is either purchased or strangled in such a way that it exists only in name. Oppositions in the so-called democracies cannot make their voice effective and hence they either come to compromise or oppose for the sake of opposition which involves waste of national energy. The communists further point out that the position of party followers in Great Britain, the U.S.A. or in any other country is one of complete subordination to the leaders. They have not only no voice but are very often compelled to follow the dictates of the party leaders either by the threat of dissolution of the legislature or by expulsion from party. Offices and honours of the state often go to those who help the leaders in winning election and it is in this way that the party-in-power seeks to perpetuate its rule over the masses. In this respect, the position of the average voter or of the average legislator in Great Britain or in the U.S.A. is in no way superior to that of the Soviet voter or legislator. Furthermore, the theory of separation of powers has not been applied fully even in the most democratic states like the U.K., U.S.A. or India which claim to possess a better system of government than the Soviet system. Everywhere the same set of men rule. In Britain, U.S.A. and India, the judiciary is appointed by the executive. The legislative powers in these countries are virtually vested in the executive whose position is further strengthened by extensive emergency powers. With the gradual extension



of the functions of the state the tendency in every country has been to make the executive more powerful and "turn Parliaments into mere talking shops" and reduce the average voter to zero

The Communists explicitly deny the utility of separation of powers and emphatically assert that real popular sovereignty can be established only by the inauguration of unity of authority—an authority which is not enfeebled either by artificial dissension or by the threat of dissolution. But it should be remembered that this unity of authority does not preclude division and delimitation of functions between different organs of the government, for, such division and delimitation are necessary for the efficient functioning of the government. The Soviet system is marked no doubt by an extreme centralisation of powers in the higher organs of the state but such centralisation has been tempered by the provision that all decisions made by the higher organs of the state must be endorsed by the Supreme Soviet. The Supreme Soviet in the USSR is supreme in the same sense in which Parliament is supreme in Great Britain.

**The Legislature—the Supreme Soviet.** The legislative authority of the Soviet Union is vested in the Supreme Soviet of the USSR and is composed of two chambers—the *Soviet of the Union* and the *Soviet of Nationalities*. The Soviet of the Union is elected by the citizens of the Union on the basis of one representative for every 3 lakhs of people. All citizens irrespective of caste, religion, nationality or sex, have the right to vote provided they have attained the age of 18. Voting by secret ballot is the rule. The Supreme Soviet is elected for a term of 4 years.

The Soviet of Nationalities is the Second Chamber and is elected by the citizens of the USSR, by union and autonomous republics, autonomous regions, and national areas on the basis of 25 members from each union republic, 11 members from each autonomous republic, 5 from each autonomous region and 1 from each national area. The electoral system is the same as in the Lower House. It also sits for four years.

The Supreme Soviet is a very big body, the total membership being in the neighbourhood of 2,000 and as such it is quite unfit to exercise any real power. The two Houses possess equal powers, no distinction being made between Money bills and other bills. In case the two Houses fail to come to an agreement, generally a Joint Committee of the two decides the issue. If the Joint Committee also fails, the matter is reconsidered by the two Houses. If the disagreement still persists, the Presidium has the right to dissolve both the Houses and order a re-election. But it should be noted here that disagreements between the Houses are few and far between in view of the centralised control exercised by the only party—the Communist Party. The Council meets twice a year and in case of emergency, it may meet oftener. The real work of the Legislature is however done by the Presidium.

### **Powers of the Supreme Soviet.**

The Supreme Soviet is the highest organ of the state power in the USSR. Its powers may be summarised as follows —

1. The Supreme Soviet is the only organ which possesses the exclusive power of making All-union laws, which, published in the languages of All-union Republics, are binding in all the Union Republics and in case of a conflict between the two, laws of the Union will prevail.

2. It has the sole right to amend the constitution which can be amended by a majority of at least two-thirds votes in both the Houses separately.

3. The Supreme Soviet has the exclusive power to admit new Republics into the Soviet Union and to create new Autonomous Republics, Autonomous Regions and National Areas. It is also the sole authority to confirm alteration of boundaries between Union Republics.

4. The Supreme Soviet is entrusted with the function of approving the consolidated state Budget of the Union and reporting on its fulfilment and the distribution of financial resources between the union and the units. It has also to supervise foreign trade and to determine the national econo-

mic plan and to organise a uniform system of national-economic statistics. It organises contracts and grants loans and directs the currency and credit system of the country.

5 The Supreme Soviet has the exclusive jurisdiction over foreign affairs. It decides upon the representation of the U.S.S.R. in international relations and ratifies treaties with foreign states. It also determines general procedure governing the relations of Union Republics with foreign states.

6 The Supreme Soviet organises the defence forces of the U.S.S.R. and directs all the armed forces of the state. The Supreme Soviet also determines the directing principles governing the organisation of military formations in each Union Republic which is authorised by the Constitution to raise its military formations.

7 The Supreme Soviet appoints the Council of Ministers, elects the Presidium and also the judges of the Supreme Court. It also elects the Procurator-General. Thus the Supreme Soviet is not only the sole legislative organ of the union, it also appoints the executive and the federal judiciary. Both the Council of Ministers and the Presidium are responsible to it.

In addition to these, the Supreme Soviet possesses other powers including legislation regarding judicial system and procedure, legislation concerning Union citizenship, rights of foreigners, rights of appointing, investigating and auditing commissions on any question, right of determining the basic principles of land tenure, of education and public health, etc.

The above formidable list of powers vested in the Supreme Soviet has made it the source of all powers of All-union importance. But in practice, however, the Supreme Soviet does not or cannot exercise all these enumerated above. It is a very big body which holds its sessions only for about twenty days a year which is quite insufficient to discharge the multifarious functions allotted to it. The main function of the Supreme Soviet is simply to approve the measures initiated by the hierarchy of the Soviet governmental system, —namely, Presidium, the Council of Ministers and the Politbureau.

## Peculiarities of the Supreme Soviet.

As the supreme legislative organ of the state, the Supreme Soviet presents certain peculiarities which are not to be found in the legislative bodies of other countries. The peculiarities may be stated as follows:

(1) The Supreme Soviet of the USSR consists of *two* Houses: the Soviet of the Union and the Soviet of Nationalities. Both the Houses are elected simultaneously by the direct votes of the people. In other countries, the method of election of members of the Upper House is different from that of the Lower House and the rule regarding their duration of office is also different. In England, about nine-tenths of the members of the House of Lords are hereditary peers; in India, members of the Council of States are indirectly elected and partly nominated.

(2) Both the chambers in the USSR continue for four years. But second chambers in other countries are mostly permanent bodies, only a portion of the members retiring every two or three years. Thus both in India and the USA, a third of the members of the Upper Houses retire every two years.

(3) The Soviet of Nationalities, which is the second chamber of the USSR, is the solitary example of a second chamber which consists of the members of the different nationalities of the Union. In other federations, the Upper House represents the component states which form the federation, but in the USSR, the second chamber is elected on the basis of nationalities.

(4) The Supreme Soviet of the USSR can be dissolved by the Presidium before the expiration of its term, but in other countries, although the Lower House is subject to earlier dissolution, the Upper House cannot be dissolved.

(5) The members of both the Houses of the Supreme Soviet are elected by the direct vote of the people and the qualifications of the voters are the same in both the electoral constituencies. But in Great Britain, France, and India, the electoral rules and the qualifications of voters for electing

members to the Upper House are different from those of the Lower House

(6) Excepting in the U.S.A., the Lower House in every country plays the more predominant part in legislation, finance and in controlling the executive. It is the sole authority to initiate Money bills but in the U.S.S.R., both the Houses possess co-equal powers

(7) Legislatures in other countries consist of members who represent different political parties and as such the party-in-power has to face the criticism of, and sometimes to make a compromise with, the opposition parties. But in the Soviet Government, as there is no opposition, the work of the government is carried on very smoothly without any opposition. The Communist Party is the only political party whose members are in the habit of dictating the measures sponsored by the party leaders

### **The Presidium.**

The Presidium is one of the numerous innovations introduced by the astute communist leaders to tighten their control over all the affairs of the state. The Supreme Soviet is so unwieldy that it has neither the time nor the competence to go into the details of administration, legislation and finance. It also meets for very short periods. The Presidium exercises the powers of the Supreme Soviet when the latter is not in session.

The Presidium consists of 33 members headed by one President. There are 15 Vice-Presidents representing the 15 Union Republics, one Secretary and 16 members. Quite unlike in other countries, the Soviet government has no chief executive head like the King or the President but it is the Presidium which performs the function which are, in other countries, done by the King or the President. The Presidium is, therefore, 'collegial President of the USSR'.

The Presidium is elected by a joint session of both the Houses of the Supreme Soviet for a term of four years. It may, however, be earlier dissolved if its creator, the Supreme Soviet, is dissolved. But the presidium continues in office even after its dissolution till the newly elected Supreme Soviet shall have

elects a new Presidium. The Presidium is responsible and accountable to the Supreme Soviet.

### **Powers and Functions of the Presidium.**

The Presidium has been vested with wide powers and an analysis of its powers shows that legislative, administrative and also judicial functions have been vested in it.

(1) The Presidium convenes the sessions of the Supreme Soviet twice a year and can dissolve it in case of disagreement between the two Houses. It can order new elections within two months of the dissolution of the Supreme Soviet or on the expiration of its normal duration. The Presidium summons the first sitting of the newly-elected Supreme Soviet

(2) The Presidium being a child of the Supreme Soviet has the power to issue decrees which have the force of law throughout the territories of the Union. As the Supreme Soviet meets only for short periods during a year, the Presidium has to meet the demand for new law by its decrees. It also gives interpretation to the laws in operation and in doing so, it explains the purpose of such federal laws, the duties they impose and the way in which they are to be enforced.

(3) Measures passed by the Supreme Soviet are published in the languages of the Union Republics duly signed by the President and the Secretary of the Presidium. But these measures cannot be vetoed by the Presidium which can refer the proposed measure to a referendum on its own initiative or on the demand of one of the Union Republics.

(4) In accordance with the provisions of the Constitution, the Council of Ministers is responsible to the Supreme Soviet and in the interval between its sessions, the Council of Ministers is responsible to the Presidium which can during this period appoint or release ministers, form new ministries, and new regions and new territories, subject, of course, to confirmation by the Supreme Soviet.

(5) The Presidium can set aside the decisions and orders of the Council of Ministers of the Central government and also of the Council of Ministers of the Union Republics if they do not conform to law.

(6) The Presidium also performs a number of executive functions which are executed by the formal head of the state in other countries. It represents the state in its relation to foreign states, appoints and recalls ambassadors of the U.S.S.R. and receives foreign ambassadors accredited to the Soviet Union.

(7) Moreover, like the U.S.A. Senate, the Presidium ratifies and denounces international treaties by a simple majority of votes.

(8) Furthermore, when the Supreme Soviet is not in session, the Presidium can proclaim a state of war and on that account order general or partial mobilisation, and short of that, it can proclaim martial law.

(9) It bestows decorations and titles of honour—including military titles, diplomatic ranks and other special titles.

(10) The Soviet Deputies enjoy immunity against arrest. Without the consent of the Supreme Soviet, no Deputy can be arrested or prosecuted and in the interval between its sessions, no Deputy can be arrested without the permission of the Presidium.

(11) Lastly, the Presidium has the right to pardon and thus to work as the final court of appeal.

### Nature of the Presidium

An analysis of the varieties of functions entrusted to the Presidium by the Constitution naturally raises the question, viz., what is the nature of the Presidium? Is it a legislative or an administrative body? Or is it a body corresponding to the head of the state in other countries with this difference that it is collegial in form?

The Presidium as has been pointed out earlier is an innovation of the communist leaders to make their control effective in all spheres of state activities. It has been designed in such a way that the communist leaders by pressing a button can simultaneously regulate, control, modify, retard and co-ordinate the activities of the different departments of the government. The real fact is that the Politbureau is the nerve system and the centre of political gravity of the system of government and

it is this body which makes all important decisions. But as it is an organ of the communist party and not a part of the governmental machinery, the politbureau cannot function directly and enforce its decisions on the government. So the Presidium has been set up to carry out the policies already determined by the Politbureau. The Presidium is hardly an administrative body, far less a formal head of the state corresponding to the King or President in other countries. Apparently it seems to be more a legislative rather than an administrative or judicial organ but in reality it represents a combination of all the functions of a modern government with inconsistencies which are too palpable. Although the Presidium is a child of the legislature and represents the legislature when the latter is not in session, yet it cannot make any law. It is also rather strange that although it is derivative in its origin it can destroy its creator. Again it may seem strange to those who are accustomed to judicial review of the legislative enactments to see that in the Soviet Union, it is the Presidium which gives interpretation of the laws of the Union and can invalidate any of the laws of the Union Republics if it be in conflict with any of the Union laws. Again, it can appoint and release ministers, annul their decisions. It ratifies treaties, regulates foreign relations and makes war and peace. But all its activities are subject to confirmation by the Supreme Soviet.

An examination of the character of the Presidium reveals the truth that it is the most active organ of the government as it is continuously in operation extending its long arm over every sphere of state activity. It has considerably relieved the executive, the legislature and the judiciary of much of the burden and congestion of their work. The Communists claim that the supremacy of the Presidium proclaims the dictatorship of the proletariat. They further point out that in other countries, the most dominant economic class usurps all powers and enacts measures conducive to their own class interest. In the Soviet Union, there is only one class, i.e., the proletariat class whose Deputies form the Supreme Soviet and the Presidium which is a product of the Supreme Soviet and accountable to it, exercises the state powers by delegation from the proletariat.



**The Judiciary.** The only Federal Court in the U.S.S.R is the Supreme Court which stands at the apex of the judicial organisation of the country. The court consists of about 30 judges, all of whom are appointed for 5 years by a joint session of the Legislature. The Supreme Court has both original and appellate jurisdiction. It hears appeals from the decisions of the Supreme Courts of the Republics. It exercises its original jurisdiction in trying disputes between the Republics and also trying cases against members of the Union government or cases of exceptional importance.

Below the Supreme Court, there are Supreme Courts in each Constituent Republic. The judges are chosen by the Soviets of the Republics from amongst men of judicial experience. Next to it, are the Regional Courts whose judges are elected by the Soviets of those regions. Below them are the People's Court located in each district. The judges are elected by the people of the district. The judges of the People's Court are assisted by two assessors or citizen judges who are selected from a panel prepared by the Local Soviets. These courts deal with minor civil and criminal cases, the more important cases being tried at the Regional Courts. Besides these regular courts, there is a large number of Special Courts like the Juvenile courts, Military tribunals, and Disciplinary courts. There is a Procurator-General who is appointed for seven years by the Supreme Soviet. He is vested with the "supreme supervisory power to ensure the strict observance of law by all state personnel".

### **Special Features of the Soviet Judicial System.**

A critical examination of the judicial administration of the USSR reveals features which have no parallel in any other country. One of the noticeable features of the system is that down from the People's Court right up to the Supreme Court, all the judges are elected by the legislatures of different areas. In addition to the regular judges of these courts, there are assessors or citizen judges who are appointed from a panel of citizens. Any person having the right to vote is entitled to act as a citizen-judge. These citizen-judges assist the regular judges not only by finding facts but also by ascertaining the nature and extent of breach of law and determining punish-

ment in accordance with law. The Soviet system of judicial administration may therefore be said to afford opportunity to every sensible citizen to participate directly in the administration of justice. One beneficial result which the system has produced is that the litigant parties have no unnecessary dread for, or lack of confidence in, the judges. The judges in the Soviet Union, unlike judges in other countries, are not men recruited from a higher stratum of society rather they are men of people's choice and rank having full knowledge of the local ways of life. Hence the judges are in a better position to investigate into the causes of the breach of law and determine punishment. The Soviet citizen is so much intimately connected with the administration of ordinary criminal and civil justice that it has succeeded in creating a sense of security in the accused person who feels that he can expect justice from the court. Where the judges are men of different rank, training and temperament, the accused person cannot feel secure and the ends of justice are not realised.

Another attractive feature of the Soviet judicial system is that the procedure is very simple and intelligible even to the average man. Law-suits are not unnecessarily dragged on to the great detriment of the parties involved rather they are very quickly disposed of with nominal expenses to the parties.

Lawyers have little scope in the Soviet system. Regular judges assisted by citizen-judges find out facts by cross-examining the litigant parties and their witnesses. For this, engagement of lawyers at a huge expense is not necessary. All citizens are amenable to the same law irrespective of their caste, colour or creed and proceedings in law courts are conducted in the regional languages.

Viewed from the standpoint of the ends of justice, the Soviet system claims to be superior to the systems prevailing in other countries. In other countries, punishment is awarded to the guilty persons on the basis of the nature and extent of the offence committed by the guilty persons without reference to the social causes which drive men to commit such offence. The Soviet judges, on the other hand, determine first the social cause which gives rise to such offences and award punishment with a view to reforming the offender so that he may lead a

clean and honourable life as a good citizen in future. Propensity to commit offence is a sort of social disease which can be prevented by removing the social causes and not by punishing the offender out of a sense of sheer apathy and disgust

The system is more in keeping with democratic principle inasmuch as all the judges of all grades of court including the Supreme Court are elected and they can be removed only by the system of re-call or by special impeachment. So the judges are excessively dependent on public opinion. The question is can such a system, depending as it does on public opinion, be independent and impartial? Independence of the judiciary is no doubt an essential feature of a good government but it is very difficult to secure that sturdy independence of the judiciary by any known method of their appointment and dismissal. The Soviet judiciary may not be as independent as is desirable but the system may be said to be more in keeping with democratic principles

It should however be noted here that political offences, i.e., treason against the state or destruction of public property, espionage on behalf of foreign states are dealt with very severely. These cases are tried without the help of citizen-judges and the procedure is also different from the ordinary procedure which leaves no room for the realisation of the democratic ideal

### **Amendment of the Constitution.**

The constitution may be amended by the Supreme Soviet. All proposals for amendment must be passed by a majority of not less than two-thirds of the votes in each of its chambers

**Political Party in the U.S.S.R.** The study of the Soviet political system will be incomplete if one does not know its party organisation. The new constitution does not permit any other party to nominate candidates for election. The Communist Party is the only political party which functions both inside and outside the government, the hierarchy of the party having the sole control over the entire party machinery and through it over the government. The party "is not only the

motive power in government, but is a great unifying force. The Government and the Party are one and inseparable."

The Communist Party of Russia serves two different purposes. The party is both 'a creed and a mechanism'—a creed inasmuch as it entertains a number of economic and political doctrines which are steadfastly adhered to by all its members. It is a mechanism in the sense that the party is a great unifying force which brings together its different parts for the purpose of realising its ultimate goal.

The philosophy of the Communist Party is largely based on the doctrine of Karl Marx and as such communistic creed violently indicts the theory and practice of modern capitalistic society.

The primary unit of the party is a group of three or more members in good standing organised in a factory, mine, army regiment, store, office, university, village or a collective farm and these local units now known as 'primary organs' are entrusted with the task of upholding party interests and propagating party creed within its own circle. Above this primary unit, there are party committees of towns and districts which, in their turn, choose the party committees of provinces and regions. The provincial or regional committees send representatives who form the party congress in each of the federated Republics of the union which in turn, elects delegates who form the All-union congress which stands at the apex of the party organisation. This body is required by the present party rules to meet at least once in every three years. It is theoretically vested with the power of making big decisions for the party and carrying them into effect. But as it is a huge and unwieldy body comprising more than two thousand delegates, it is quite unfit to make quick decisions and hence the Congress elects *three* committees—The first and the most important of these committees is the *Central Committee*, consisting of 70 members. This committee is virtually the Congress in action and therefore the supreme party authority. As the Central Committee also does not meet very frequently, the committee selects the Political Bureau, commonly known as the *Politbureau* which is the ultimate seat of power. It consists of 10 to 15 members of

whom Joseph Stalin was a dominating member and it is needless to add that it was he who ran the whole show. The Central Committee also elects another body of 10 members called Organisation Bureau (*Orgbureau*) with Stalin again as a controlling member. The function of this body is to supervise the work of the party hierarchy, especially the work of party propaganda and recruitment. There is also a *Secretariat* of four members, appointed by the Central Committee and the General or First Secretary of the party is the most powerful personality in the party. All important decisions are made by the Politbureau and then they are simply ratified by the government and the Supreme Soviet. Appointments to public offices are also made on the recommendations of the bureau. So it is a system of wheels within wheels—a virtual dictatorship of the Communist Party through its bureaus, all of which were dominated by one man—Joseph Stalin and now by his successor.

It must however be noted here that it is not at all easy to get into the party though it is easy enough to get out of it. The general policy of the Communist Party is to restrict the number of party members and hence the requirements for admission have been made so high that very few can meet those requirements.

### **Qualifications for Party Membership.**

The qualification necessary for membership of the Communist Party is so exacting in its nature that it is not possible for an average man to enter into the party. Strict adherence to party creed and the will to obey are the twin principles of party ideology. Drinking and frequent exercise of the right to divorce are strictly forbidden to a party member. Thus admission to the party is based exclusively on the ground of personal merit. As the strength of the Communist Party lies in its unity and discipline, the party demands of all its members unquestioning obedience to its decision. It further demands that each member of the party should be a man of ideal character and a model worker on his job. He should "know the technique of his trade or profession, excel in the improvement of his qualifications, in the acquisition of knowledge, in the observance of labour discipline and in com-

pliance with the laws of the State-demands that his entire conduct in public and in private be exemplary”

Such an exacting standard of qualifications has necessarily limited the number of party membership to a small minority of the Soviet people. Thus the numerical strength of the party is at present over six millions in a population of two hundred millions. Although the number of active members is insignificant compared to the total population of the state, the Communist Party has built a net-work of organisations which are affiliated to the party and through these affiliated organisations, the Communist Party extends its control over every stratum of the society and to every age-group. Mass contact in which lies the invincibility of the Communist Party is effected through various organisations of a non-political character. It is through these organisations that the Communist Party instils its doctrine into the minds of every class of Soviet citizens. Besides Producers' co-operatives, Consumers' co-operatives and Trade unions, there is a number of Youth organisations through which the Party educates the future citizens to be ardent Communists devoted to their Soviet Socialist fatherland. Of the Youth organisations, the most important is the *Komsomol* with a total membership of over nine millions, recruited mainly from the ages between 15—26. The *Komsomol* organisation is widely dispersed in the country, having its centres in schools, factories and the like. Below it is the organisation called the *Pioneers* which include children between the ages 10—15. Next to it is the organisation known as the *Little Octobrists* which include children between the ages 8—10. These organisations are rightly called 'Transmission belts' which bring the party in close contact with the masses who are systematically initiated to the doctrines of communism and in later age they become, if not full-fledged Communists, at least ardent supporters of Communism.

### **Nature of the Soviet Federation.**

The Stalin Constitution of 1936 provides for a federal form of Government for the U.S.S.R. The essential characteristics of a federal government, namely, division and distri-

bution of powers between the Centre and the Units, a written and a rigid constitution, a Supreme Court—are all present but nevertheless, the Soviet federation presents certain striking features which distinguish it from all other federations and make it a class by itself.

*Firstly*, the Soviet federation is a marked departure from normal federalism inasmuch as the constituent units of the USSR. have been organised on the basis of nationality. Each constituent Republic of the Soviet Union represents different nationality but in other federations, the units do not represent the different nationalities inhabiting the state but are territorial divisions inhabited not exclusively by one race or nationality.

*Secondly*, on a close examination, the Soviet federation appears to be a highly centralised system with little legislative and administrative autonomy left for the units which, of course, enjoy some amount of cultural and economic autonomy. As a matter of fact, the Central government of the USSR enjoys powers far wider than those of the national governments of the U S A or Australia or Switzerland. The Central Government possesses the power to confirm the taxes imposed by the Constituent Republics and also to determine the basic principles in the domain of education and public health which apply throughout the union. The centralised character of the government is obvious from the fact that the whole machinery of the government is controlled by the Communist Party whose leaders are the Ministers and it is the Ministers who exercise the power. Practically speaking, the same set of persons govern the Union as well as the Constituent Republics. The federal principle has also been weakened by the constitutional provision that in case of a conflict between a law of the All-Union and that of a Constituent Republic, the former shall prevail.

*Thirdly*, in sharp contrast to the strong centripetal bias of the constitution, stand certain other characteristics which may mislead one to the belief that the Soviet government is a type of federation in which the component units enjoy far greater freedom than those of any other federation. The right to secede from the USSR has been granted to all

constituent republics. Besides, the constitution provides for separate representation of each constituent republic in foreign states. Each can make separate agreements and exchange diplomatic and consular representatives with foreign states. Byelorussia and Ukrain are members of the United Nations according to this provision of the Constitution. Each has been accorded the right to maintain its own militia. But these and similar other rights though much publicized by the Soviet leaders seem to be rights on paper only in view of the highly centralised character of the government. No constituent republic of the Soviet Union has upto now been heard of going out of the federation.

*Fourthly*, the Soviet federation is unique in the sense that unlike other countries, the two chambers of the federal legislature have equal powers even in respect to financial legislation. The initiative in legislation belongs equally to the two Houses and a law is deemed to have been passed if passed by a simple majority. Not only this, the federal legislature in the U S S R. alone can amend any provision of the constitution even altering the distribution of powers as laid down in the constitution. Neither in the U. S. A nor in India, the federal legislature alone is competent to redistribute powers in a way in which they already have been distributed by the constitution.

*Lastly*, in all federations, the federal judiciary is empowered to check the tendency of either of the governments to go beyond their jurisdiction as fixed by the constitution. This the judiciary does by declaring *ultra vires* any federal law that encroaches upon the jurisdiction of the state and vice-versa. The Supreme Court of the U S S R however does not possess the competence to declare any law unconstitutional. In the Soviet Union, it is not the judiciary but the Presidium, an innovation of the Communists, which gives interpretation of the laws of the union and can invalidate any of the laws of the constituent republics if it be in conflict with any of the Union laws.

**Conclusion.** The Soviet system of economy and administration is a new experiment on an unprecedented scale.



It has survived many an onslaught both from within and from without. The Soviet system has received nothing but scathing condemnation in the hands of its detractors while friends of the Soviet Union have extolled the system to the sky. But it is now possible to make a correct appraisal of the Soviet system without swinging to the extremes of eulogy or hatred.

Nobody will perhaps like the idea that a vast country like the Soviet Union should be ruled by a single political party, to be more accurate, by a single man, however well-meaning or benevolent he might be. The entire machinery of the state from top to bottom is regulated and controlled by the single party—the Communist Party which can claim as its active members six millions in a population of 200 millions. The dictatorship of the proletariat as it is called in the USSR is in effect the dictatorship of the Communist Party. The rigour and ruthlessness with which party discipline and party solidarity are maintained are not certainly above criticism. Furthermore, the attitude of the Soviet Government towards private property, religion and social customs and institutions, though not positively hostile, cannot be said to be helpful, to the spontaneous growth of a man's personality according to his natural aptitude. The Soviet ideology has not been accepted *in toto* anywhere outside the Soviet Union. But some of the principles of the Soviet political creed are slowly creeping into the political systems of other countries.

In spite of some of its serious limitations, the Soviet system may be said to have attained a remarkable success in the fields of economic and cultural regeneration of the country. Before the Revolution, nearly 80 per cent of the population was illiterate. There were nationalities within the Union which did not even possess a script of their own. Today, save for a small fraction of the older generation, literacy is almost universal and there is no nationality without its written languages. No class distinction can hinder access to higher education—general or technical. This is not a mere tell-tale story. Foreign observers have testified to the universal interest evinced by the Soviet people in culture. The Soviet Union was the most hard-hit by the Second World War.

yet within less than a year of the conclusion of the war when other nations could not even set their houses in order, the Soviet Union held a Science Congress in the war battered city of Leningrad in which scientists of almost all countries participated. There is hardly any country where scientific study is more encouraged. One of the greatest achievements of the Soviet Government is the complete liquidation of prostitution—an abominable vice which many governments encourage directly or indirectly. In the treatment of criminals as in the treatment of prostitution, the Soviet Government has made the prison a place of reform where a large number of persons guilty of repeated offences get opportunity to return to normal life. No other country has gone so far as the Soviet Union in its efforts to emancipate women who vote and assume office on a footing of equality with men and receive the same wage for the same work. The Soviet Government, moreover, can claim to have solved the problem of racial and linguistic minorities in a way which has proved baffling to Europe, Asia, Africa or even to America. National minorities in the Soviet Union develop their culture without let or hindrance. The four Moslem Republics of Tajikistan, Turkomania, Uzbekistan and Ajerbaijan enjoy perfect freedom in religion, language and culture.

Besides the elevation of the general character and outlook of the people, the Soviet Government have achieved a remarkable success in the economic regeneration of the country. The successive five-year plans have succeeded in fully exploiting the economic possibilities of the country. They have developed both agriculture and industry and have transformed the people from “a nation of handicraftsmen to a nation of machine-conscious technicians.” The system has harnessed science to the process of production, industrial and agricultural alike and has thus been able to solve the problem of unemployment by ensuring a minimum to all. Another beneficent result of the system is that it has given the workers a status of dignity and freedom by introducing worker’s democracy which has evoked a patriotic sentiment not less profound than any to which Individualism has given birth. It is true that these achievements have been purchased at a

high price but the fact remains that no other government has been able to profess a deeper and truer humanism than the Soviet Government, no other government has been able to achieve a fraction of what it has achieved within so short a space of time

## SUMMARY

### *Characteristics of the Constitution*

1 It is federal consisting of fifteen union republics, besides (a) autonomous republics (b) autonomous regions and (c) national areas. Although the units have been given the right to secede yet central control is very rigid over all spheres of administration.

2 It is based on the socialist system of economy.

3 The Constitution provides for fundamental rights as well as fundamental duties of citizens.

4. The two Houses of Legislature possess equal powers.

5 The two Houses of Legislature in a joint session elect the Ministry which comprises two classes of ministers, viz, (i) All-Union Ministers and (ii) Union-Republican Ministers.

6 The Presidium of the Supreme Soviet consisting of 33 members and elected by the Supreme Soviet is another noticeable feature of the Constitution.

7 All categories of Soviet judges are elected by the legislature and there is provision for citizen-judges who possess equal power in trying cases along with the regular judges.

### *Rights and Duties of Citizens.*

The Constitution not only grants rights but it also imposes certain obligations on the citizens. The rights are (1) Right to work, (2) Right to rest and leisure; (3) Right to education, (4) Equality of rights regardless of nationality, race and sex, (5) Freedom of conscience, (6) Freedom of speech and expression, (7) Personal freedom and inviolability of Homes, (8) Right of asylum, (9) Freedom to form organisations.

The Duties are —

(1) To work, (2) To abide by law and the Constitution, (3) To protect and fortify public socialist property; (4) To serve in the army for the defence of the fatherland. Disloyalty to the state in any form is regarded as a great offence.

### *The Executive—The Council of Ministers*

The Council of Ministers consists of about 60 members including All-union Ministers and Union Republican Ministers, all of whom are elected by a joint session of the Supreme Soviet to which it is responsible. It roughly corresponds to the Cabinet in other countries having parliamentary forms of government.

### *The Legislature—The Supreme Soviet*

The Supreme Soviet consists of two Houses, the Soviet of the Union and the Soviet of Nationalities. The Soviet of the Union consists of members elected by the people on the basis of one representative for every three lacs of people by direct voting and secret ballot with universal suffrage. The Soviet of Nationalities consists of members who represent the different nationalities inhabiting the union at the rate of 25 representatives from each Union Republic, 11 from each Autonomous Republic, 5 from each Autonomous Region and 1 from each National Area.

Each chamber enjoys equal power with the other, no distinction being made between ordinary and money bills. Deadlock between the two Houses is settled by joint session. In case they fail to come to an agreement, the Presidium can dissolve the chambers and order a fresh election. By a joint session, it elects the members of the Council of Ministers, the Presidium and the Judges of the Supreme Court. The Council of Ministers is responsible to it.

### *The Presidium*

The Presidium is a standing committee of the Supreme Soviet consisting of 33 members, all of whom are elected by the Supreme Soviet in a joint session and are responsible to the latter. The Presidium exercises the powers of the Supreme Soviet when the latter is not in session. Some of its more important powers are (1) to summon the Supreme Soviet and to dissolve it in case of difference between the two Houses, and to order a new election, (2) to ratify treaties, (3) to interpret laws and promulgate decrees, (4) to appoint and remove the supreme command of the armed forces, (5) to declare war and order mobilization when the Supreme Soviet is not in session.

### *Judiciary*

The centripetal bias is present even in the judicial organisation. The Supreme Court stands at the apex of the judicial system, having both original and appellate jurisdiction. The judges are elected by the Supreme Soviet for five years. Besides the Supreme Court, there are courts of other local areas. All judges are elected and citizen-judges participate in the administration of justice. There is a Procurator-General who enforces the observance of all Soviet Laws.

*Political Party*

The only political party recognised by the Constitution is the Communist Party whose influence is potent both inside and outside the government. The party organisation is also very highly centralised, the cream of power being vested in a body known as the Politbureau which virtually decides vital issues and makes all important appointments. The party instils into the mind of the masses the doctrine of Communism through a network of organisation like the Trade union, Youth organisation, etc.

**QUESTIONS**

- 1 Describe the unique features of the constitution of the U.S.S.R. (C U 1953, 1955)
  - 2 Briefly describe the judicial system of the U.S.S.R. (C. U. 1956)
  - 3 Broadly indicate the structure of the state in the U.S.S.R. (C. U. 1957)
  - 4 Discuss the nature of the basic rights and duties of the citizen in the Soviet Union. (C U Hon 1957)
  5. "The one-party system (in the U.S.S.R.) is not strictly speaking a type of party government at all." Examine this statement. (C U Hon. 1951)
  - 6 Discuss the position and functions of the Presidium in the constitutional system of the U.S.S.R. Is it an executive or a legislative body? Give reasons for your answer.
  - 7 Compare the federalism of the U.S.A. with that of the U.S.S.R. (C U Hon 1958)
  - 8 Discuss how far the U.S.S.R. is a Socialist state of workers and peasants.  
Is there any scope for private enterprise in the U.S.S.R. ? - (C. U. 1958)
  - 9 Describe the Constitution and functions of the Supreme Soviet in the U.S.S.R. (C U. 1959)
  - 10 Analyse the structure of the state in the U.S.S.R., and discuss in this connection the nature of the Soviet Federation. (C U 1960)
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## CHAPTER XI

### GOVERNMENT OF THE UNION OF BURMA

#### *References*

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**Introduction.** Fourth of January, 1948, will be regarded by all future citizens of Burma as a red letter day in their national history. It was a day on which Burma won her political freedom after one hundred and twenty-three years of political thralldom. The independence which Burma has succeeded in wresting from the British is not of the type, usually known as Dominion Status, but it is full and complete independence which does not require even the formal obligation of owing allegiance to the British Crown. Burma is a sovereign state, her international status being in no way inferior to that of the UK, or the USA, or the USSR.

British inroads into Burma began as early as 1612 when agents of the British East India Company established some trading centres in Prome, Ava and in certain other localities. As in India, the opening of these trading centres was only a prelude to the annexation of Burma. The First Burmese War of 1826 gave Assam (which was then a part of Burma), Arakan, Tenasserim and a part of the Martaban to the British. In 1852, during Lord Dalhousie's Viceroyalty, Pegu was annexed on the plea of maltreatment of British officers by the Burmese. The final blow which was a death-blow to Burmese independence was dealt by Lord Dufferin who waged the Second Burmese War on the ground of Burma's alleged conspiracy with France to overthrow British rule in India. King Thibaw was defeated and deported to India. Thus in Burma also British flag followed British trade. In 1897, the different provinces of Burma were amalgamated and placed under a Lieutenant-Governor. In 1923, the Province was constituted a Governor's Province under the Government of India Act of 1919. This unification of Burma with India gave a new impetus to Burmese national movement which gathered considerable strength under the influence of the Indian National

Congress. To stem the tide of the national movement for independence, the astute British rulers lent their support to a political party which put forward a demand for the separation of Burma from Indian administration. The Government of Burma Act, 1935, separated Burma from India on April 1, 1935. After the passing of the Act, the executive authority of Burma was vested in a Governor who was to exercise it, on behalf of His Majesty, with the help of a council of ministers, not exceeding ten in number. The ministers were to aid and advise him in all matters except in so far as he was required to exercise them or any of them in his discretion. In the exercise of his discretionary powers, the Governor could appoint not more than three counsellors to assist him.

The declaration of war by Japan altered the situation in Burma. U Saw, the Prime Minister of Burma, while returning from New York was interned and detained in the Uganda province of North Africa on the ground of his alleged alliance with the Japanese. The internment of U Saw created great resentment among the Burmese people who rallied round their young leader Aun Sun who was held in high esteem by almost all sections of the Burmese people. Aun Sun had some military training in Tokyo and on his return to Burma, he organised a private army which he transformed into the people's army when the British had retreated from Burma. Aun Sun sought Japanese help only to overthrow the British from Burma, but later on he was thoroughly disillusioned about Japanese intention in Burma. Ba Maw, a puppet of the Japanese, was appointed Prime Minister during Japanese occupation. General Aun Sun, by sheer tact, foiled Japanese ambition in Burma and began to organise his army for the liberation of Burma. When the Japanese left Rangoon, Aun Sun's Guerilla army took the city two days before the British army reached Rangoon. A clash on a small scale took place between the British and Sun's Guerillas. Dorman Smith, the former Governor of Burma, returned to Rangoon after British re-occupation and decided to arrest the Burmese leader together with his eight thousand Guerillas. But due to the timely intervention of Lord Louis Mountbatten, the Supreme Commander of East Asia, Governor Dorman Smith

had to change his policy of repression. At the instance of Lord Louis Mountbatten, Aun Sun made an agreement with the government according to which a section of his Gueilla army was absorbed in the Burmese Territorial Force ; the rest was disbanded.

In October, 1945, Governor Dorman Smith offered six of the fourteen seats to General Aun Sun in the re-constituted Ministry of Burma. The General declined the offer. On his refusal, the government decided to set up a new ministry with U Saw, the former Premier as its head. The decision was opposed by a nation-wide agitation and the authorities had no other alternative but to abandon the idea. Dorman Smith was replaced by Governor Hubert Rance who conceded majority of the seats in the ministry to the General. As the Vice-President of the Constituent Assembly, the General made an important announcement that a Sovereign Constituent Assembly for Burma was to be set up for making the new constitution and that Burma was to be made completely independent by the end of the year 1947.

In January, Aun Sun along with other leaders visited London in order to carry on negotiations with the British Government for expediting Burmese independence. He signed an agreement with the British Prime Minister Atlee and according to the terms of the pact, Aun Sun's Government was recognised as the Interim Government of Burma. In the election of the Constituent Assembly in April, 1947, his party captured 196 seats in a total of 202, the remaining 6 seats being secured by the Communist Party. Two months after the election, the life of this young leader along with some of his close associates was cut short by assassination while they were holding a conference in the Government House. Thakin-Nu, Aun Sun's close associate and Deputy Chief of the Party was appointed Prime Minister immediately after this dastardly deed. Thakin-Nu signed, on the 17th October, 1947, the Anglo-Burmese treaty which recognised the sovereign independence of Burma outside the British Commonwealth of Nations. According to the terms of this treaty, Burma was declared an independent Republic on 4th January, 1948 with Sao Shwe Thaik as the first President and Thakin-Nu as the



first Prime Minister. The Burmese Parliament in its meeting on that day ratified the Anglo-Burmese treaty.

**Territories of the Union of Burma.** The territory of the Union of Burma comprises (i) Burma proper, i.e., territory formerly governed by His Britannic Majesty through the Governor of Burma, (ii) the Shan State including the former Federated Shan States and Wa States, (iii) the Karen States including Kantaiwaddy, Bawlake and Kyebugyi and (iv) the Kachin State including Myinkina and Bhamo Districts. Besides these, there are two special areas called the Chin Division and the Kaw-thulay region.

**Salient features of the Constitution.** The New Constitution of Burma has a unitary form of government, although the Shan State and the Kachin State have been granted the right to secede from the union. True it is that the three states and the two special areas enjoy some amount of local autonomy and two of the former have the constitutional right to secede but the control of the Union Government is so great over them that decisions made by them in all matters of local administration are subject to the control of the Union Government.

The constitution is *written* and the procedure to amend the constitution is slightly different from the ordinary law-making process. The government is *republican* and *parliamentary* in form. The President is the nominal head of the executive elected by the two Houses of legislature in a joint session. The Ministry, the real executive, is responsible to the union legislature for its policy and action.

Another peculiar feature of the constitution is that it provides for a *single citizenship* for the whole of the union. The fundamental rights of the citizens of the union have been guaranteed by the New Constitution. The novel feature of the constitution is that it guarantees the rights of citizens—civil, political, economic, religious and cultural—not only by a mere enumeration of these rights in the constitution but it has also made provision for a constitutional remedy for the implementation of the rights guaranteed. The constitution confers upon the citizens the right to move the Supreme Court

by appropriate proceedings for the enforcement of any of these rights. The special economic provision is that although private monopolist organisations are forbidden, private property and private enterprises are guaranteed. The constitution provides for nationalisation of private property if public interest so requires, but only in accordance with law and on payment of compensation. The fundamental economic policy of the state consists in adopting large-scale planning, supporting co-operative organisations and collective farming.

**The Union Executive—The President.** The executive head of the Union is the President who is elected by both chambers of Parliament in joint session, for a term of five years and may be re-elected only once. The President may be removed from office by impeachment for violation of the constitution or for other gross misconduct. Charges against the President are to be brought by one chamber and tried by the other, in both cases by a two-thirds majority. In the event of his death or incapacitation, etc., the presidential powers are to be exercised by a *Commission*, consisting of the Chief Justice and the Speakers of the two Houses of Legislature.

*Presidential Powers* The President is the Constitutional head of the government and as such possesses the usual powers. The President appoints the Judges of the Supreme Court and the High Court. He summons, prorogues and dissolves the Chamber of Deputies on the advice of the Prime Minister. But he has no right of vetoing Bills. Generally, the President is to act according to the advice of the ministers but in certain matters he may act independently of his Cabinet. When the Prime Minister ceases to command the confidence of the majority in the legislature, the President may refuse to dissolve or prorogue the legislature even if the Prime Minister requests him to do so. In such a case he may call upon the Legislature to elect a new Prime Minister within 15 days, failing which the Legislature is to be dissolved. The President cannot make war except with the approval of the Legislature.

**The Council of Ministers.** The Executive powers of the Union are exercised by the Prime Minister and his colleagues

who are appointed from among the members of the majority party in the legislature. The Prime Minister is to be appointed on the nomination of the Chamber of Deputies and other ministers are appointed on the advice of the Prime Minister. The Prime Minister may ask any minister to resign and in case of the latter's refusal, the President may dismiss him on the advice of the Prime Minister. The constitution has formally embodied the principle of collective responsibility of the ministers to the Chamber of Deputies. The resignation of the Prime Minister will lead to the dissolution of the ministry as a whole.

The first Cabinet was formed in March, 1948 and consisted of 17 ministers. The constitution provides that the Cabinet must have one representative of each of the three states. There shall also be a minister for Chin affairs. All these ministers are to be appointed by the President on the advice of the Prime Minister who, in his turn, must consult the members of the State Council of each of the states before recommending the appointment. Each of these ministers acts not only as a member of the Union Cabinet but also as the executive head of each state.

**Parliament.** The Union Parliament consists of the President and the two Houses, the Chamber of Nationalities and the Chamber of Deputies.

The *Chamber of Nationalities* comprises 125 members, of whom 53 represent the Union proper, and 72 seats have been distributed among the states and tribal areas in the following way. The Chiefs—*Saohpao*—of the Shan States elect from among themselves 25 members; the Karen States elect 3 members in a similar way and 24 seats are reserved for the Karens, 12 seats for the Kachin State and 8 seats for the area known as the Chin Division.

The House sits for four years and possesses almost co-equal powers with the Chamber. The dissolution of the Lower House automatically leads to the dissolution of this House also.

*The Chamber of Deputies.* The Chamber of Deputies consists of 250 members, all of whom are elected for a term of

four years on the basis of adult suffrage, the law being that all adults of the age of 18 are entitled to vote. Any body attaining the age of 21 or above may seek election as a deputy.

*Powers of the Chamber of Deputies* The Lower House of the Union is more powerful than the Upper House. The two Houses possess co-equal powers in regard to ordinary legislation and in case of disagreement, the President may convene a joint meeting of both the Houses and a bill or an amendment, if passed by a majority in that joint sitting, will be deemed to have been passed by both the chambers. The House possesses the special prerogative of introducing money bills which when passed by the House will become law 21 days after the date on which the bill is sent to the Chamber of Nationalities, notwithstanding the dissent of that House.

Closely following the constitution of the Irish Free State, the Chamber of Deputies has been given the power to nominate the Prime Minister. The Ministry is also responsible to this House.

The Burmese Parliament is therefore vested with the power of making laws with regard to all subjects within the territory of the union save those matters included in the State List. But it has the right to make laws on the state subjects with the consent of the states. The approval of the Union Parliament is necessary in making appointments of the Judges of the Supreme Court. It also possesses the power to impeach the President.

**The Judiciary.** The constitution provides for the establishment of a Supreme Court which is the highest court of appeal, having no original jurisdiction. The Judges are appointed by the President, subject to the approval of both the Houses of Parliament in joint meeting. Judges may be removed from office by the President for proved misconduct. Any charge brought against any Judge must be substantiated before a special tribunal of three members including the Speakers of the two Houses and a resolution to that effect must be passed by both the chambers in a joint sitting.

The jurisdiction of the Court extends over all appeals preferred from the High Court and such other Courts as the Parliament may by law prescribe. The Court also gives

advice to the President whenever the latter may seek it in respect to any state matter.

There is a High Court which exercises both original and appellate jurisdiction. It is presided over by a Chief Justice and nine other judges. The rules regarding the appointment and dismissal of High Court Judges are similar to those which apply to those of the Judges of the Supreme Court

**Position of the States.** Each of the three states, namely the Shan State, the Karen State and the Kachin State has its own State Council and an executive. The two special areas—the Chin Division and the Kaw-thulay region have their separate councils with an executive head. The head of the executive of each of these local areas is a member of the Union Cabinet who is selected by the President from among the members of the State Council and appointed on the nomination of the Prime Minister acting in consultation with the local Council. There is also a Cabinet of state ministers who are elected by the members of the State Council at the first meeting after a general election.

Each of the State Councils comprises all the representatives of the state in the Union Parliament. The State Council can make laws on the subjects included in the State List which include almost all the subjects included in the State Lists in the Indian Constitution.

The Shan State and the Karen State have been granted the right to secede from the union but the constitution has forbidden such secession during the first ten years of the constitution. Proposal for secession in order to be effective must be passed by two-thirds majority of the State Council. Thereupon the President shall hold a plebiscite for ascertaining the will of the people of the state and a plebiscite commission, appointed by the President, consisting of an equal number of members of the union and of the state, will supervise the plebiscite.

**Amendment of the Constitution.** Special provision has been made for the amendment of the constitution. Any proposal for constitutional amendments must first be passed by both the Chambers separately and then it must be passed by a two-thirds majority of both Chambers in a joint sitting. Any

proposal for amendment affecting the State Legislative List or the State Revenue List, or a bill affecting the special rights conferred on the Karens or the Chins shall not be deemed to have been passed by the Chambers unless a majority of the members representing the Karens or the Chins have voted in its favour. This is an important provision of the constitution designed to protect the interests of the important minorities.

**Political Parties in Burma.** The Anti-Fascist *People's Freedom League* which came into existence during Japanese occupation of Burma is the largest single political party which practically united all other party groups in the country. The party was organised under the able leadership of the late Aun Sun who was the rallying centre of all the progressive forces in the country. The Constituent Assembly, elected on April 9, 1947, consisted of 173 members of this party out of a total of 255.

Although the New Constitution was adopted unanimously, the *Communists* form a distinct group and they have already separated themselves with a view to reconstituting the government according to their own ideology. The Communist Party of Burma making common cause with the Karens has set up parallel governments in some parts of the union. Events in Burma are moving fast and its geographical contiguity to People's Republic of China has complicated the internal situation of the country. The future of the parties in Burma is difficult to predict.

## SUMMARY

British control over Burma terminated in January, 1948, when the Union of Burma came into existence as a result of an agreement with the British Government. The Burmese Constituent Assembly, which was set up in 1947 framed a constitution which was duly passed and adopted next year.

### *Characteristics of the Constitution*

The form of government is unitary, republican and parliamentary. Burma is not a member of the Commonwealth of Nations.

### *The Executive—the President*

The President who is the head of the state is elected by both the Houses of Parliament in a joint session for a term of five years. He may be re-elected only once.

He summons, prorogues and dissolves the lower House on the advice of the Prime Minister. He cannot, however, veto bills. A commission consisting of the Chief-Justice and the Speakers of both the Houses of Parliament exercises the Presidential powers during the absence of the President.

### *Council of Ministers*

There is a Council of Ministers headed by a Prime Minister, all of whom are appointed, as in other parliamentary governments, from amongst the members of the majority party in the legislature. Ministers are accountable to the legislature.

### *Legislature—Parliament.*

The Burmese Parliament consists of the President and two Houses, Chamber of Nationalities and Chamber of Deputies. The Chamber of Nationalities has a total membership of 125 and there are 250 Deputies elected for a term of four years. Both the Chambers possess equal power. But the Lower House is more powerful in regard to money bills and it has more direct control over the ministry.

### *Judiciary*

The Supreme Court is the highest court of appeal, the judges of which are appointed by the President, subject to confirmation by a joint session of both the chambers of legislature. It has also advisory functions. There is also a High Court which exercises both original and appellate jurisdiction.

### *Party System*

The Anti-Fascist People's Freedom League was organised during Japanese occupation and in course of time, it developed into the strongest political party which is still in possession of power. The communist party in Burma is a militant organisation. Besides these, the Karen separatists also form a distinct group.

## QUESTIONS

1. What are the parts of the territory of the Union of Burma? What is then relation with the Union Government?
2. Discuss the salient features of the Constitution of Burma.
3. Discuss the position and powers of the President of Burma and contrast them with those of the President of the U S A or India.
4. Discuss the relation of the executive to the legislature in the Burmese Constitution.

## CHAPTER XII

### GOVERNMENT OF CEYLON

#### *References ·*

The Constitution of Ceylon (Ceylon Government Press, Feb., 1948)

**Introduction.** Ceylon, which was known as *Tamraparni* in ancient times, is an island in the Indian Ocean, by the south of India. Among the foreign powers, the Portuguese were the first to make settlements on the south and west parts of the island. From the Portuguese, the island passed into the hands of the Dutch who were driven by the British Government which annexed the foreign settlements to the Presidency of Madras in 1796. After six years, Ceylon was separated from Indian administration and made into a crown colony. Ceylon attained the status of full responsible government within the British Commonwealth of Nations after the passing of the Ceylon Independence Act, 1947, which came into force on February 4, 1948.

The basis of the Ceylon Independence Act, 1947, which confers upon Ceylon full responsible status within the Commonwealth is an agreement between the two countries on defence, external affairs and public officers. The agreement provides for mutual military assistance for the security of their territories. The agreement on external affairs provides that in external affairs, the two governments generally will act jointly in accordance with the principles and practice observed by other members of the Commonwealth. The purpose underlying the public officers agreement is to safeguard the position of specified classes of persons who hold office under the Ceylon Government.

The constitution of Ceylon is of the unitary type, the island being divided, for administrative purposes, into nine provinces, each of which is governed by a central government agent. The government is of the parliamentary type, the executive being responsible to the legislature.

**The Executive—the Governor-General.** The executive authority of the government is vested in the Governor-



General who is the constitutional head of the state. He is appointed by the crown on the recommendation of the Prime Minister of Ceylon.

**Political Executive—the Cabinet.** As in other states with parliamentary governments, the real executive consists of a Cabinet or Council of Ministers. The present Cabinet which consists of 13 members was formed by the United National Party of Ceylon which is the largest political party. Ministers are appointed from among the majority party in the legislature and hold office so long as they command the confidence of the Lower House.

**The Legislature.** The legislature consists of two Houses—the *Senate* and the *Parliament*.

The Senate which is the Upper House consists of 30 members, half of whom are elected by the Parliament and the other half are nominated by the Governor-General. Senators must be 40 years of age, enjoying full civil and political rights. The normal duration of the Senate is 5 years.

The Senate possesses little control over legislation. It can initiate bills excepting money bills but it cannot reject them. The framers of the constitution wanted to make the Senate mainly a revising body. But it possesses the power to delay by one year bills passed by the Lower House.

The Parliament of Ceylon is the Lower House, consisting of 101 members, of whom 95 are elected and 6 are nominated by the Governor-General. Parliament sits for 5 years unless it is earlier dissolved.

It is the Parliament which is the real law-making body. It can initiate money bills and criticise the government. The ministry is responsible to it for its policy and action.

**The Judiciary.** There is no uniform legal system throughout the island, on the contrary, there is a variety of law governing the inhabitants of the different parts of the island.

The Judiciary consists of a *Supreme Court*, exercising both original and appellate jurisdiction in civil and criminal matters. Besides, there is the *Court of Criminal Appeal*, Courts of Requests, District Courts and Rural Courts, the last named one trying petty civil and criminal cases.

**Political Parties.** Ceylon is the home of numerous political parties of which *the United National Party* is the largest and the strongest and it is now the party-in-power. It advocates close co-operation with other members of the Commonwealth. Besides, there are about seven other parties, such as, the Independents, the Ceylon Tamil Congress, Communist Party, Leninist Party, Labour Party, etc

## SUMMARY

Ceylon became independent in 1947 along with India and still continues as a member of the Commonwealth

### *Characteristics of the Constitution*

It is unitary with a parliamentary government

### *The Executive*

The Governor-General who is appointed by the Crown is the constitutional head but the real executive is the council of Ministers who are appointed from among members of the majority party in the legislature to which it is responsible

### *The Legislature*

There are two Houses—Senate and Parliament—the former consisting of 30 members, half of whom are elected by the Parliament and the other half nominated by the Governor-General

Parliament consists of 101 members mostly elected for a term of five years. It has exclusive control over finance and the executive

### *Judiciary*

There is a Supreme Court having both original and appellate jurisdiction. There is also a Court of Criminal Appeal and other inferior courts

### *Party System*

There are many political parties in Ceylon of which the United National Party is the biggest. Besides, there are the Ceylon Tamil Congress, Communist Party, Labour Party, etc

## QUESTIONS

1 Discuss the main features of the Constitution of Ceylon

2 Discuss the relation between the two Houses of Legislature in Ceylon

3 What constitutes the executive in Ceylon? Discuss its relation with the legislature

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## CHAPTER XIII

### GOVERNMENT OF THE INDIAN UNION

#### *References*

Government of India Act, 1935

Indian Independence Act, 1947.

L S Sastri—The Constitution of India (2nd Edition)

D Basu—Commentary on the Constitution of India

N Srinivasan—Democratic Government in India

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**Introduction.** The present generation of Indians may justly feel proud of the fact that they have weathered many a storm and have lived to witness the liquidation—voluntary or compulsory—of the biggest empire of the world over which the sun never sets. Our much cherished goal, viz., the attainment of political freedom is no longer a dream but an accomplished fact and it rests entirely on our sweet will either to remain 'as an integral part of British Empire' or to sever that feeble link, the remnant of our political slavery. But although the British have left us free to mould our future in our own way, we cannot possibly rid ourselves so soon of the institutions built so assiduously by the foreign rulers in our country. The present system of law, education and administration is the direct outcome of British rule in India, and while not being blind to the denationalising influences of the British rule in this country, we must also be alive to the gains we have reaped by coming in contact with a people who have made definite contributions to the progress of civilisation. The Constitution of the Independent Republic of India which has been framed by the National Constituent Assembly bears unmistakable signs of the influence of the previous British-made constitution.

The New Constitution of India which was duly signed by Dr Rajendra Prasad, President of the Indian Constituent

Assembly at 11-10 a.m., on the 26th January, 1950, was the fruit of about three years' hard labour by the Constituent Assembly. Our constitution is perhaps the biggest constitution of the world, containing 251 pages, 395 articles, 22 chapters and 8 schedules. The constitution is called the *Constitution of India*. It has been drafted in English but it may be translated into Hindi and other principal Indian languages at the instance of the President of the Constituent Assembly. The materials of the Indian Constitution have been gathered from so many sources, British, U.S.A., Dominions, Eire, Government of India Act, 1935—to name only a few—that the constitution has not only been the most voluminous one but it has been the most complex constitution, its numerous articles, clauses and sub-clauses being beyond the ready comprehension of the average man.

**The Indian Union and its Territories.** It has been laid down in the constitution that India will be a *Union of States*. Territories formerly known as Provinces, Chief Commissioner's Provinces, Native States will be known as states. The centrally administered territory of the Andaman and the Nicobar Islands will also form part of the territory of the Indian Union. Besides these, provision has been made for the accession to the Indian Union of other territories which now form part of foreign territories in India and also of Pakistan. The Indian Parliament may, by law, form new states, unite two or more states or increase or diminish the boundaries of any state or rename any state with of course the assent of the states specified in Parts A and B of the First Schedule.

States specified in Parts A and B enjoy almost equal status both in respect to their internal constitution and relations with the Union. The Union Government however reserves the right to exercise a general supervision and control over the states specified in Part B for a period of ten years. States in Part C and territories mentioned in Part D will be centrally administered areas.

## The First Schedule to the Constitution of India

Part A	Part B	Part C	Part D
1 Andhra			The Andaman and Nikobar Islands
2 Assam	1 Hyderabad	1 Ajmer	
3 Bihar	2 Jammu and Kashmir	2 Bhopal	
4 Bombay	3 Madhya Bharat		
5 Madhya Pradesh	4 Mysore	3 Coorg	
6 Madras	5 Patiala and East Punjab States Union	4 Delhi	
7 Orissa	6 Rajasthan	5 Himachal Pradesh	
8 Punjab	7 Saurashtra	6 Kutch	
9 Uttar Pradesh	8 Travancore-Cochin	7 Manipur	
10 West Bengal (including Cooch-Bihar and Chandannagar)		8 Tripura	
		9 Vindhya Pradesh	

### Recommendation of the States Reorganisation Commission.

According to the report of the States Reorganisation Commission which was appointed by the Union Government, the Indian Union will consist of 16 States as against the existing 27 States and there will be 3 Centrally Administered Areas. The Commission based the reorganisation not merely on linguistic consideration but also on several other factors.

According to the report of the Commission, the following states go out of existence —(i) Himachal Pradesh, (ii) P E P S U, (iii) Ajmere, (iv) Kutch, (v) Saurashtra, (vi) Madhya Bharat, (vii) Bhopal, (viii) Vindhya Pradesh, (ix) Travancore-Cochin and (x) Mysore.

The proposed states are 1 Madras, 2 Kerala, 3 Karnataka, 4. Hyderabad, 5 Andhra, 6 Bombay, 7 Vidarbha, 8. Madhya Pradesh, 9. Rajasthan. 10 Punjab, 11. Uttar Pradesh, 12. Bihar, 13 West Bengal, 14 Assam, 15. Orissa and 16 Jammu and Kashmir.

The present state of Hyderabad will be divided into three parts, one of which is to form the new state of Karnataka, the second part to go to Bombay and the rest to remain as the reorganised state of Hyderabad. The Commission has recommended that the reorganised state of Hyderabad might unite with Andhra after the general elections likely to be held about 1961, if by a two-thirds majority, the legislature of Hyderabad state expresses itself in favour of such unification

Tripura is merged with Assam, and, Saurashtra and Kutch with Bombay. Delhi, Manipur and the Andamans remain centrally administered territories

The three new states created by the Commission are 1 Kerala, 2 Karnataka and 3 Vidarbha. One result of the scheme of reorganisation will be the elimination of the existing distinctions between Part A and B States and the disappearance of Part C States

### S. R. Bill.

The draft *States Reorganisation Bill* prepared broadly on the basis of the decisions already announced on the SRC report proposes the division of the Union into 15 States and 7 centrally administered territories of which Greater Bombay will be one. The proposed states are 1 Andhra-Telangana 2 Assam 3 Bihar 4 Gujarat. 5 Kerala 6 Madhya Pradesh 7 Madras 8 Maharashtra 9 Mysore 10. Orissa 11 Punjab 12 Rajasthan 13. Uttar Pradesh 14 West Bengal 15 Jammu and Kashmir

The Union territories are

1 Greater Bombay 2 Delhi 3 Himachal Pradesh 4 Manipur 5 Tripura 6. Andaman and Nicobar 7 Laccadives, Minicoy and Amindive Islands

The bill also envisages *five* Zones into which the units will be divided and details the functions and composition of each zone. The *Northern zone* will comprise Punjab, Rajasthan, Jammu and Kashmir, Delhi and Himachal Pradesh. The *Eastern zone* will include Bihar, West Bengal, Orissa, Assam and the Union territories of Manipur and Tripura. The *Western zone* will comprise Gujarat, Maharashtra and the union territory of Bombay. The *Southern zone* is to comprise Andhra-Telangana, Madras, Mysore and Kerala.

In each of these zones, there will be a *Zonal Council* consisting of the Chief Minister of each State, one member from each union territory nominated by the President, an adviser to the Government of Assam for tribal areas in the case of the Eastern Zone and one Union Minister nominated by the President. The Union Minister will be the chairman of each zonal council which will be advisory. There is however no provision in the present bill for Bengal-Bihar merger or border adjustment which has been proposed to be included in a subsequent bill.

### **States Reorganisation Act and the present structure of the Indian Union.**

Mainly on the basis of the recommendation of the States Reorganisation Commission, the Indian Parliament passed the States Reorganisation Act in August, 1956 and it came into force from first November of that year.

The main features of the Act are that it abolished the former distinction between 'Part A', 'Part B' and 'Part C' states. The country was divided into 14 States and 6 Centrally administered areas, all States being placed under Governors with the solitary exception of Jammu and Kashmir whose head continued to be known as *Sadar-I-Riasat*. Thus the office of the *Rajpramukh* was abolished. The reorganisation of States was made in response to a popular demand that arose nearly fifty years ago when the Indian National Congress practically committed itself to the fulfilment of this popular demand, namely, the formation of Indian States on a unilingual basis. The new States that came into existence as a result of reorganisation are mostly unilingual in character.

with, of course, two exceptions, namely, Bombay and Punjab, both of which are bilingual in character.

The Indian Union now comprises the following 15 States and 8 centrally administered areas

#### States

1 *Andhra Pradesh*.—The new State comprises the old State of Andhra which was carved out of Madras in 1953 and the Telengana area of Hyderabad. It covers an area of 1,10,250 sq. miles with a population of 31 million. Hyderabad is its Capital.

2. *Assam*—Assam with its Capital at Shillong is the easternmost State of India. The State of Assam including the North East Frontier Agency has an area of 84,924 sq. miles with a population of 9 million.

3 *Bihar*.—The richest of Indian States in mineral resources and industrial potentialities, Bihar has been slightly reduced in area by a transfer of a strip of its territory (Purulia and a part of Purnea) to West Bengal. With its headquarters at Patna, Bihar now covers an area of 67,163 sq. miles with a population of 3,87,76,860.

4 *Maharashtra*.—The bi-furcation of the old State of Bombay on linguistic basis gave birth to the new state of Maharashtra in May, 1960. The new state includes 26 districts and has an area of 1,18,903 sq. miles with a population of 32,1,68,614. The City of Bombay is the headquarters of the new state.

5 *Gujarat*—Gujarat is one of the two states that came into existence as a result of the bi-furcation of the old State of Bombay on linguistic basis. Gujarat is smaller than its rival Maharashtra. It has an area of 72,137 sq. miles with a population of 162,62,135. Ahmedabad is the Capital of the new state.

6 *Madhya Pradesh*.—The new State has been formed of the old State of that name minus a few districts, the previous State of Madhya Bharat except a small territory and the former States of Bhopal and Vindhya Pradesh. It has an area of 1,71,200 sq. miles with a population of 26.1 million, one-sixth of which comprises tribal population. Bhopal is the headquarters of the new state.



7. *Madras*.—The new State of Madras has emerged out of the reorganisation of States as a compact linguistic unit, though reduced both in size and population by the transfer of south Kanara to Mysore and Malabar districts to Kerala. With its headquarters at Madras city, the State covers an area of 50,170 sq. miles with a population of 30 million.

8. *Orissa*.—The States Reorganisation Act left Orissa intact. With its new headquarters at Bhubaneswar, the State comprises an area of 60,136 sq. miles with a population of 14,64,600.

9. *Punjab*.—The new State has been formed by merging the former two States of East Punjab and PEPSU, thus bringing together the Hindi-speaking with the Punjabi-speaking people. It has an area of 47,556 sq. miles with a population of 16 million. Chandigarh is the headquarters of the new State.

10. *Uttar Pradesh*.—The former State of United Provinces has been renamed Uttar Pradesh without any change either in its area or population. It is the largest State in respect of population which is 6,32,15,742. With its headquarters at Lucknow, it comprises an area of 1,13,400 sq. miles.

11. *West Bengal*.—It is the truncated and dismembered part of the former province of Bengal, partitioned in 1947. The area and population of this State have slightly increased as a result of the transfer of two strips of territories from Bihar in accordance with the transfer of territories Act, 1956. West Bengal now comprises its own 14 old districts, the merged State of Cooch Behar, Chandannagar, former French possession and Purulia and a part of Purnea district transferred from Bihar. Taking all these territories together, it has now an area of 34,945 sq. miles with a population of 26,30,19,992. Calcutta is its headquarters.

12. *Mysore*.—The new State of Mysore has been formed of the Karnataka area of old Bombay including Coorg, Karnataka area of Hyderabad and most of the south Kanara districts and *Kollegal Taluka* which formed parts of old Madras. With its headquarters at Bangalore, it has an area of 74,326 sq. miles with a population of 1,94,01,193.

13. *Rajasthan*.—Rajasthan remains practically unchanged with the addition of Ajmer and two strips of territory from Bombay and Madhya Bharat respectively. It has an area of 1,32,078 sq miles with a population of 16 million. Jaipur is its headquarters

14 *Kerala*—Kerala is entirely a new State which is the result of amalgamation of mainly the old State of Travancore-Cochin and Malabar district of Madras. It is the smallest of the Indian States covering an area of 15,035 sq miles with a population of 13.6 million. It is the only State in India where the Communist party of India was able to form the government. Trivandrum is its headquarters

15 *Jammu and Kashmir*—Though the State acceded to the Indian Union in October, 1947, its status is slightly different from that of the other constituent States of India. It has an area of 85,861 sq miles with a population of 40,21,615. The picturesque city of Srinagar is its headquarters

### Centrally-administered areas

1 *Delhi*—It has been the Capital of India since 1912. It is treated as a separate unit of administration. It has an area of 578 sq miles with a population of 17,44,072

2 *Himachal Pradesh*—The former 'Part C' State of this name comprising 21 hill States of Punjab was transformed into a centrally administered area. It has an area of about 11,053 sq. miles with a population of 11,10,000. Simla is its headquarters

3. *Manipur*—It is situated on the borders of Assam and Burma. It has an area of 8,628 sq. miles and a population of 5,78,000. Imphal is the headquarters

4 *Tripura*—This area is on the borders of Assam and East Pakistan, having an area of 4,049 sq miles and a population of 6,39,000. Agartala is its headquarters

5 *Andaman and Nicobar Islands*—Originally used as a penal colony, these islands in the Bay of Bengal were for some time used for refugee rehabilitation by the Government of India. It comprises an area of 3,134 sq miles and a population of 31,000. Port Blair is its headquarters

6 *The Laccadive, Minicoy and Amindive Islands*—These islands including the Amindives are 200 miles off the coast of Malabar. There is a population of 21,195 Kozhikode is its headquarters

7. *The Naga Hills Tuensang area*—To these six centrally administered areas, there is a new addition, namely, the Naga Hills-Tuensang area which was formed on December 1, 1957. This area is distinct from the North Eastern Frontier Agency and is administered by the Governor of Assam as the agent of the President. It has an area of 6,236 sq. miles with a population of  $3\frac{1}{2}$  lakhs

8 *North-East Frontier Agency (NEFA)*—This newly created area lies on the borders of Burma and Tibet. It is about 33,000 sq miles in area and is divided into five administrative divisions, viz.—Kameng Frontier Division, Subarnasri Frontier Division, Lohit Frontier Division, Tuensang Frontier Division, Tirap Frontier Division. The Governor of Assam acting as the agent of the President administers this area under special provisions of the constitution

Under the States Reorganisation Act five *Zonal Councils* have been set up in each of the five zones into which the States and the areas have been grouped. The zones are the Northern, the Central, the Eastern, the Western and Southern Zones

**Sources of the New Constitution.** In drawing up a constitution for free India, the framers of the constitution were influenced by certain other constitutions of which the Government of India Act, 1935, may be said to have exerted the most tremendous influence. Besides the Government of India Act, 1935, the framers of the constitution drew heavily upon the principles, organisation and working of the British, USA, Canadian, Australian, Burmese and Irish Constitutions. That the new constitution is a direct descendant of the Act of 1935 is apparent from the fact that the Indian Constitution is not merely a constitutional document of the U.S.A. type dealing with the super-structure of the government but is also a detailed legal code dealing both with the constitution of the Union and also the constitutions of the states in all details including a number of miscellaneous matters like property,

election, languages, suits and contracts, Public Service Commission, etc. A detailed discussion about the similarity and dissimilarity between the two is given below.

The Preamble and the fundamental rights have been borrowed from the U.S.A. constitution while the directive principles of state policy have been drawn from the Irish and the New Burmese Constitution.

The principles of Parliamentary government have been derived from the British system while the creation of a strong centre with relatively weak units and the three-fold division of governmental functions into Union List, State List and Concurrent List closely resemble the Canadian model.

### **The New Constitution of India and the Government of India Act, 1935**

The frame-work of the new constitution of India is in many respects akin to that set up by the Government of India Act, 1935. The new constitution of India bears unmistakable stamp of its indebtedness to the Government of India Act, 1935 in so far as the size, contents, and inclusion of miscellaneous matters are concerned but it will be going too far to suggest that the new constitution of India is an exact copy of the Act of 1935. The fact is that at the time when the new constitution was framed, the system of administration that prevailed in the country was modelled largely on the government of India Act, 1935 and the framers of the Constitution rightly or wrongly thought it wise to engraft some of the features of the old constitution upon the new. Similarities and dissimilarities between the old and new constitutions of India may be summarised as follows

*Firstly*, a federal form of government on an all-India basis was envisaged by the Government of India Act, 1935. The new constitution of India has also provided for a federal form of government for India minus of course that part of former India which is now called Pakistan. The diversities of race, language and religion of this vast sub-continent made it necessary to have a federal form of government and therefore this similarity is only natural and inevitable and should not be characterised as an instance of mere imitation.

*Secondly*, the new constitution of India resembles the old in so far as the scheme of division of powers between the centre and the units are concerned. Closely following the old, the new constitution also makes a tripartite division of powers into Union List, State List, and Concurrent List with this difference that whereas in the old, residuary powers were vested in the Governor-General, the new constitution has made a bold departure in this respect by vesting it in the centre.

*Thirdly*, the Government of India Act, 1935 provided for a system of bi-cameral legislature for some of the provincial legislatures. The new constitution of India may be said to have been considerably influenced by this principle in the organisation of the state legislatures.

*Fourthly* Closely following the Act of 1935, the new constitution of India has set up a Supreme court which is indispensable to all federations but the federal judiciary of the old and the new constitutions differs fundamentally in respect to their powers and jurisdiction.

*Lastly*, the new constitution of India, like the old, is also a detailed legal code dealing both with the constitution of the union and also constitutions of the states in all details including a number of miscellaneous matters like property, election, languages, suits and contracts, Public Service Commission, etc.

The new constitution of India differs from the old in this that the Government of India Act, 1935 envisaged a federal scheme of government on an all-India basis but the new constitution framed a federal model for that part of the country which was called India after Partition by the former rulers.

*Secondly*, one of the greatest achievements of the new constitution is the integration and democratisation of the those of the former Native States and Chief Commissioners' Provinces that remained in India after Partition. The Government of India Act, 1935 simply ignored the rights of these people to emancipation.

*Thirdly*, although the Government of India Act, 1935 grudgingly introduced a system of responsible government with a ministry at the centre, the extra-ordinary powers vested in the Governor-General made it a sham. In sharp contrast

to the old, the new constitution of India has created a really responsible government at the centre with an elected President as the chief executive head who occupies a position more or less like that of the British King. The Ministry is the real executive and is responsible to the popularly elected legislature. But it is necessary to make a brief reference to the emergency powers vested in the President by the new constitution by virtue of which he can suspend the state constitutions, abrogate fundamental rights and even their enforcement by the judiciary. The framers of the new constitution may be said to have been considerably influenced by the provisions of the old in respect to the emergency powers of the President. But it must be borne in mind that the President of India, unlike the Governor-General of the past, being just like a constitutional monarch cannot exercise these special powers according to his personal discretion. He is to exercise these powers in accordance with the advice of the Ministry responsible to the legislature but the Governor-General in the exercise of his special powers were not required to do so. Therefore the comparison does not stand.

*Fourthly*, under the Act of 1935, like the Governor-General, the provincial governors enjoyed discretionary powers and special responsibility which they could exercise independently of the ministers. But under the new constitution, the State governors enjoy no such powers. They are merely constitutional heads of the States.

*Fifthly*, under the old constitution, legislatures in India were non-sovereign subordinate law-making bodies, almost completely subordinate to the executive. The British Parliament had complete legislative sovereignty over India. Under the new constitution, the legislatures in India enjoy full freedom of legislation within the ambit of the constitution subject to no external authority. The Indian Parliament can now, in certain cases, amend the constitution and in certain other specific cases, state legislatures also have a share along with the central legislature in the amendment of the constitution—a power denied to the legislatures under the old constitution.

*Sixthly*, the incorporation of a number of fundamental rights along with the directive principles of State policy is a noticeable feature of the new constitution conspicuous by its absence in the old. The presence of this feature has made the new constitution really democratic in character while its absence made the old constitution an autocratic one.

*Seventhly*, the supreme court under the new constitution has been given the status of a real federal court with a far greater range of powers not enjoyed by the federal court under the old constitution.

*Lastly*, the difference between the old and the new becomes more marked when it is realised that the old constitution was a gift—nay an imposition by the ruling power for the enslavement of the Indian people who had no voice in shaping their political destiny. But the new constitution heralds a new era in Indian history by introducing a government of the Indian people, for the Indian people and by the Indian people. The government set up by the new constitution may be good or bad but it is certainly superior to the old if we judge it by the criterion that "A good government is no substitute for self-government."

**Salient Features of the Indian Constitution.** The new constitution of India is *federal* in character, the process of formation being from unitary to federal, from centralisation to decentralisation. Though federal in type, the Drafting Committee perhaps did the right thing in preferring the name 'The Indian Union', thus laying greater stress on the fundamental unity existing between the different parts. The Indian Union is a federation with a *strong centre*, residuary powers being vested in the Indian Parliament. The Constitution provides for three legislative lists, viz., (a) the Union List, (b) the State List and (c) the Concurrent List. In this respect, the Indian constitution is more like the Canadian Constitution than the U.S.A. Constitution with this difference that the Concurrent List in India contains as many as 47 subjects as against only two—Agriculture and Immigration—in Canada. The most striking feature of the Indian federation is that unlike other federations, it is a *flexible federation* in the sense that in times of emergencies, it can be transformed into a unitary government. The framers of the constitution

have therefore conferred extraordinary powers upon the President who, in times of emergency, can practically suspend the State Constitutions and assume all powers

The constitution is *written* and in this respect it differs from the British Constitution which is mainly *unwritten*.

The Indian Constitution *stands midway between the extreme rigidity of the U.S.A. Constitution and extreme flexibility of the British Constitution*. The Indian Constitution can be amended, excepting in certain special cases, by the introduction of a bill in either House of Parliament. Such a bill, if passed by each House by a majority of the total membership of the House and a two-thirds majority of members present and voting, will be valid provided it has been assented to by the President.

Another important characteristic of the Indian Constitution is that the Government is of the *parliamentary type* and in this respect it resembles the British Constitution and differs from the U.S.A. type. In the U.S.A., the executive is independent of the legislature but in India, the real executive, the cabinet, is responsible to the Indian Parliament and holds office so long as it commands the confidence of the legislature

The Indian Constitution differs from the U.S.A. Constitution in another important respect. In the U.S.A., the constitution provides for a dual citizenship. A citizen in the United States owes a double allegiance, namely, U.S. citizenship and citizenship of the states. As a result of this dual allegiance, the status of citizens differs from state to state. But in India, the constitution recognises *only one citizenship*, the Indian citizenship alone.

As in the U.S.A., the Indian Constitution provides for the *supremacy of the constitution* which is the supreme law of the land. There is a *Supreme Court* with power to decide disputes between the centre and the states.

Another distinctive feature of the Indian Constitution is that it has vested in the Union Parliament the sole power to amend the constitution, the states having no share in the constituent powers. But the Union Parliament alone cannot effect any alteration in the division of powers between the centre and the states. To make such alterations, the Union



Parliament will require the assent of at least half the legislatures of states. The constitution of the Dominion of Canada has conferred upon the provinces the powers to amend their constitutions within the federal framework. So also is the case in the Commonwealth of Australia. But in India, the states enjoy no such constituent powers, perhaps due to the fact that such powers in the states are likely to develop centrifugal tendencies in the states and are not compatible with a strong centre.

Another noticeable feature of the constitution is that it is a Sovereign Democratic Republic although it continues to be a member of the Commonwealth of Nations. India's membership of the Commonwealth does not come in conflict with her republican form of government which derives its power from the people.

Again the constitution contains a chapter on 'Directive Principles of State Policy' which direct the state to provide for just and humane conditions of work, living wages for workers, free primary education for all citizens, promotion of international peace and security, etc. These principles, unlike the fundamental rights, are not justifiable and hence are of limited utility to the citizens.

The constitution also contains an enumeration of fundamental rights by which it seeks to ensure democratic rights to the Indian people. But these rights, it should be remembered, are not absolute. They may be curtailed or even suspended by the state whenever the latter considers it necessary.

Another leading feature of the constitution is that it establishes a *Secular State* in India, the state being altogether neutral in its attitude towards religion. Citizens have been given full liberty to practise religion of their own choices in which the state does not interfere. Neither does the state make any discrimination between its citizen on religious grounds. All persons are Indian citizens with equality of status irrespective of their religious faith.

Lastly, the Indian Constitution is marked by a certain uniformity in administration which has been secured by the all-India services common to the union and the states. There is also a considerable judicial and legislative uniformity which

has been ensured by a single Supreme Court for the union and an almost common civil and criminal law.

**Preamble to the Constitution.** The Preamble to the Constitution of India declares India to be a *Sovereign Democratic Republic* and sets forth the highest ideals of justice, liberty, equality and fraternity. The Preamble runs as follows —

We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens

Justice, social, economic and political ;

Liberty of thought, expression, belief, faith and worship ,

Equality of status and of opportunity, and to promote among them all ,

Fraternity assuring the dignity of the individual and the unity of the Nation ,

In our Constituent Assembly this twenty-sixth day of November, 1949, do hereby Adopt, Enact and Give to Ourselves This Constitution

A preamble is in the nature of an introduction to a constitution, although it does not form a part of the constitution. The object for which a preamble is appended to a constitution is to explain the nature, scope and purpose of the constitution and in case of any ambiguity in any of the provisions of the constitution, the ambiguity may be clarified with reference to the intention of the constitution-makers as embodied in the language of the preamble.

Closely following the U S A model, a preamble has been appended to the Indian constitution.

Firstly, the preamble declares that in India sovereign power is derived from the people which implies popular sovereignty. But objection has been raised against the employment of the phrase "We, the people of India" on the ground that the work of actually drawing up the constitution was done by men who could not, by any democratic test, be the representatives of the people, of whom only fourteen per cent were voters at that time. So a constitution framed by a constituent assembly elected by provincial assemblies which were formed on the basis of a very limited franchise cannot be a democratic one competent to declare India a Sovereign

Democratic Republic But the objection has lost much of its former importance in view of the fact that the new Parliament elected in 1952 under adult franchise has neither abrogated nor even made any substantial alteration in the constitution—a fact which proves the popularity of the constitution

*Secondly*, the preamble proclaims certain high ideals and aspirations of the people—the ideals of liberty, equality and fraternity among the people But critics point out that the mere recital of a number of ideals without providing the material means for their realisation is of no value to the people.

*Lastly*, the preamble declares India to be a Sovereign Democratic Republic In spite of her membership of the Commonwealth, she is fully independent of external control and recognises no external authority above its own. She is Democratic inasmuch as power is derived from the people on whose consent and co-operation the government is based India is a Republic because she has her own elected President who is the head of the state

**Citizenship.** As we have already seen, there will be only citizenship for the whole of the Indian Union The New constitution, instead of making laws for the acquisition and loss of citizenship, has simply defined the classes of persons who will be regarded as citizens of the Union from the time of the commencement of the constitution The definition of a citizen as embodied in the Constitution has been conceived in such broad and liberal terms that it is within the easy reach of every class of inhabitants of this country to become a citizen of the Union. With a view to conferring the rights of Indian citizenship on persons coming from outside, the constitution has empowered the Indian Parliament to make laws regarding the acquisition and loss of citizenship

The constitution defines an Indian citizen as one (a) who was born in India, or if (b) either of his parents was born in the territory of India, or if (c) he has been ordinarily resident in the territory of India for not less than five years immediately preceding the commencement of the constitution

Besides the classes of persons mentioned above, the constitution makes provision for two other classes of persons.

namely, (a) Immigrants from Pakistan and (b) persons of Indian origin living outside India. The Immigrants from Pakistan have been classified under two groups. *Firstly*, those who migrated to India before July 19, 1948, will be recognised as Indian citizens if (a) they or either of their parents or any of their grand-parents must have been born in undivided India and (b) they have been ordinarily resident in the territory of India from the time of their migration. *Secondly*, those who migrated to India after July 19, 1948, will be deemed to be Indian citizens provided (a) they or either of their parents or any of their grand-parents must have been registered by a government officer on an application made by them. Persons applying for registration are required to be resident of the Indian Union for at least six months before such application is made

Persons who migrated from India to Pakistan after March 1, 1947, will not be ordinarily deemed as Indian citizens. But those who having so migrated to Pakistan have come back under a legal permit for permanent settlement in India will be deemed as persons who gave migrated to the territory of India after July 19, 1948

Persons of Indian origin residing outside India will be regarded as Indian citizens, if (a) they or either of their parents or any of their grand-parents must have been born in undivided India and (b) they must have been registered as citizens of India by the diplomatic or consular representatives of India in places where they are resident for the time being on application

Thus the rules governing the acquisition of citizenship in India are quite explicit and flexible. There is one citizenship for the whole of India and citizenship has been very clearly defined in the constitution. There are two principal sources of acquisition of citizenship, namely, *birth* and *naturalisation*. Citizenship by birth is regulated either by the *jus sanguinis* or by the *jus soli* principle. The principle of Indian citizenship rests on a combination of the above two principles, namely, that citizenship may be acquired by being a child of Indian parents irrespective of place of birth or by being born in India irrespective of parentage. Citizenship is also determined in India by residence

Citizenship may also be acquired by incorporation of territory. If any territory becomes a part of India, the union government has the right to determine as to who shall be the citizens of India by reason of their connection with the territory and persons thus specified by the government shall be citizens of India.

### **Loss of Indian Citizenship.**

An Indian citizen may lose his citizenship in three different ways, viz., (a) by renunciation, (b) by termination and (c) by deprivation. Except during a war, any Indian citizen of age may renounce his citizenship by making a declaration to that effect. An Indian citizen who has been naturalized in a foreign country automatically loses his Indian citizenship. A naturalised citizen of India may be deprived of his Indian citizenship by the Government for his disloyalty to the state or continued absence from India for a period of seven years.

**Fundamental Rights.** One of the main characteristics of the New Constitution is that it seeks to guarantee the social, economic and political rights of the Indian citizens. The inclusion of fundamental rights in the constitution was considered necessary to protect minorities and also to protect the individual against arbitrary action and discriminatory treatment by the government. Articles 12 to 34 deal with Fundamental Rights. Article 13 lays down that all laws including customs, bye-laws, regulation, ordinance and the like which are in force in the territory of India immediately before the commencement of this constitution, in so far as they are inconsistent with the provision of this Part, shall, to the extent of such inconsistency, be void. Clause 2 of the same article also lays down that the state shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of this contravention, be void. The peculiarity of the Fundamental Rights is that they cannot be changed by Parliament by the ordinary law-making process and that all law-making authorities, central or local, are expressly forbidden to enact laws in contravention of these rights. The constitution has also made provision for making these rights effective by pro-

viding for certain judicial remedies. The Indian Constitution has however made a bold departure from the U.S.A. constitution in the sense that instead of depending upon the Supreme Court for rescuing the state in case of gross abuse of Fundamental Rights, the constitution itself has authorised the state directly to impose certain limitations upon Fundamental Rights. Thus in India, the rights have not been formulated in absolute terms. In times of national emergency, the rights may be suspended by the state. The Fundamental Rights guaranteed by the constitution may be enumerated as follows —

**1. Right to Equality.** All citizens irrespective of their religion, race, caste, sex or place of birth will enjoy equal rights with regard to access to shops, public restaurants, hotels and places of public entertainments or to the use of wells, tanks, bathing ghats, rooms and places of public resort. But the state reserves the right to make special provision for women and children. All citizens will get equal opportunity in respect of any employment or office under the state but the state reserves the right to make provision for the reservation of appointments or posts in favour of any backward class of citizens. Untouchability is abolished and its practice in any form is forbidden. The article further provides that the enforcement of any disability arising out of untouchability shall be an offence punishable by law. But it should be noted here that the constitution does not say anything as to what constitutes untouchability. The inclusion of these provisions in the chapter on Fundamental Rights removes some of the gross social evils which so long hindered the growth of a strong national consciousness in the country. These provisions are great steps towards the establishment of social democracy without which political democracy becomes meaningless. The conferment of any title by the state, excepting military or academic distinction, is forbidden. The acceptance of any title of a foreign state by any citizen is also forbidden. But it seems that the Government of India has in recent years revised its policy in connection with the conferment of title. Both civil and military officers have been conferred titles either for social service or for proficiency in their services.

**2. Right to Freedom.** All citizens shall have the right to freedom of speech and expression, the right to assemble peaceably without arms, to form associations or unions, to move freely throughout, and to reside or settle in, any part of the territory of India, to acquire, hold and dispose of property and to practise any profession or to carry on any occupation or trade or profession.

But it must be pointed out here that the rights enumerated above are not absolute rights but the state reserves the right to restrict or curtail any of these rights in the interest of public order or morality or for the protection of the interests of any Scheduled Tribe.

No person shall be convicted of any offence except for a distinct breach of law and no person shall be prosecuted and punished for the same offence more than once.

No person who is arrested shall be detained in custody without being informed of the grounds for such arrests and he shall be given the right to consult and to be defended by lawyer of his choice

Every person arrested and detained must be produced before the nearest Magistrate within a period of twenty-four hours and no such person can be detained beyond the said period without the authority of the Magistrate

But the above rule will not apply to an enemy alien or to a person who has been arrested and detained under any law providing for preventive detention. In the case of preventive detention, a person cannot be detained for a period longer than three months unless an Advisory Board consisting of persons of the rank of High Court Judges has reported before the expiry of the said period that there is sufficient cause for such detention. The Indian Parliament may however make laws prescribing circumstances under which a person may be detained for more than three months without obtaining the opinion of an Advisory Board. But every person under preventive detention must be informed, as early as possible of the grounds for the order of preventive detention and must be given the earliest opportunity for making a representation against the order

The provisions in connection with cases of preventive detention have been modified by the subsequent Amendment Act. The new Act provides that all cases of preventive detention must have to be referred to an Advisory Board consisting of three persons of the rank of High Court Judges. If, in the opinion of the Advisory Board, it appears that there is no sufficient cause for the detention of the person concerned, the Government must release the person and in this matter, the opinion of the Board is final and binding upon the Government. Although the Amendment Act does not give the detenu the right to personally appeal before the Board, it has authorised the Board to hear the detenu in person if the Board consider it necessary. Under this act, Sub-Divisional Magistrates have been denied the power to issue orders of detention. The Act further provides that detenues can be released on parole. Thus the amendment Act has to some extent liberalised the original Act.

Similarly, the Amendment Act has also liberally interpreted freedom of speech which, according to the Amendment Act, is subject only to "reasonable restrictions". These restrictions may be imposed in the interests of the security of the state, the maintenance of friendly relations with a foreign state, public order, decency, or morality, or contempt of court, defamation, or incitement to an offence.

**3. Right against Exploitation.** Traffic in human beings and *begar* and other similar forms of forced labour are prohibited, but this provision does not in any way affect the right of the state to impose compulsory service for public purposes. Children below the age of fourteen cannot be employed to work in any factory or mine or engaged in any other hazardous employment.

**4. Right to Freedom of Religion.** Articles 25-28 deal with the religious rights of the Indian citizens. All citizens are guaranteed equal right to freedom of conscience and the right freely to profess, practise and propagate religion provided such profession or practice or propagation does not interfere with public order, morality and health. But this provision does not affect the right of the state to regulate or restrict any economic, financial, political or other secular activity which may



be associated with religious practice and to provide for social welfare and reform or to throw open Hindu Religious institutions of a public character to all classes and sections of the Hindus. No religious instruction shall be provided in any educational institution wholly maintained out of state funds. No persons attending any educational institution recognised by the state or receiving aid from state funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship against the will of such person.

**5. Cultural and Educational Rights.** Any sections of the citizens residing in any part of the Indian territory shall have the right to conserve its distinct language, script or culture of its own. All citizens shall have right in seeking admission into educational institutions maintained by the state or receiving aid out of state funds. All classes of minorities shall have the right to establish and administer educational institutions of their own choice and shall be entitled to state aid irrespective of religion and languages.

**6. Right to Property.** No person shall be deprived of property save by authority of law. No property, movable or immovable, including any interest in any company, owning any commercial or industrial undertaking, shall be taken possession of or acquired for public purpose under any law unless the law provides for compensation for the property taken or acquired and fixes the amount of compensation or specifies the principles on which the compensation is to be determined and given. All such laws made by the legislature of a state must have to be assented to by the President. If a bill pending at the commencement of the constitution in the legislature of a state has been passed by the legislature and having been reserved for the President's assent, has received the assent, the law so assented shall not be called in question on the ground that it contravenes the provisions of the law regarding payment of compensation. But the requirement regarding the payment of compensation will not apply to (a) laws providing for the imposition of any tax or penalty; (b) laws made for the promotion of public health or the prevention of danger to life or property, (c) laws relating to evacuee property; and (d) exist-

ing laws other than those passed not more than eighteen months before the commencement of the constitution.

The provisions of these rights were subjected to criticism on the ground that the constitution conferred greater safeguards on property than on personal liberty. The measures adopted to protect property practically left no room for social reform. But the Amendment Act of 1951 has met the criticism by making the abolition of zamindaris valid. Another change of a far-reaching character has been made by the Amendment Act which authorises the state to undertake industrial and commercial enterprises to the partial or complete exclusion of private enterprises from the sphere of state enterprise. This amendment has made it possible for the state to adopt measures of socialization of the widest scope.

**7. Right to Constitutional Remedies.** Article 32 of the constitution deals with the rights of the Indian citizens to safeguard their Fundamental Rights by constitutional means. Every citizen shall have the right to move the Supreme Court for the enforcement of the Fundamental Rights. The Supreme Court has been empowered to issue directions or orders or writs, such as *habeas corpus*, *mandamus*, *prohibition*, *quorum warrant* and *certiorari* for the enforcement of the Fundamental Rights. Parliament may authorise any other Court to issue these writs and directions within its jurisdiction. Parliament may however restrict or abrogate these rights in their application to the members of the Armed Forces in order to ensure the maintenance of proper discipline among them. Parliament has also been given the power to validate acts done or sentences passed in any area where martial law was in force. Parliament has been given the sole power to prescribe punishment for acts which are declared to be offences under this Part of the constitution. All existing laws relating to these matters shall, however, continue in force till they are altered or repealed by Parliament.

### *Habeas Corpus* .

This literally means to "have his body". *Habeas corpus* implies that the Supreme Court or the High Court may issue order upon a person to produce a prisoner, whom the person has kept in confinement, before the court so that the court

may ascertain whether the detention of the prisoner has been made strictly in accordance with law or not. The court thereby can either set him free or bring about his speedy trial.

### *Mandamus*

This is also an order issued by the Supreme Court or the High Court against individual officers in order to compel them to perform a public duty which is obligatory on their part. *Mandamus* is very seldom exercised against the state or ministers of the state.

### *Prohibition*

The writ of prohibition is generally applied in the case of a body acting judicially, forbidding that body either to act in excess of its jurisdiction or in contradiction of the law. This order of prohibition is generally used by higher courts upon lower courts to prevent the latter from exercising their power in excess of law or abusing the legal process.

### *Certiorari*

This order is also issued by the Supreme Court or by the High Court for two purposes. *Firstly*, it is issued to transfer a law suit from an inferior court to the High Court for the purpose of securing an impartial trial or to remedy an excess of jurisdiction. This order may also be issued even after trial to set aside an administrative order made in excess of jurisdiction.

### *Habeas Corpus*

This is a writ which empowers higher courts to enquire into the right which the lower court or the executive claims to exercise.

**Directive Principles of State Policy.** One of the novel features of the New Constitution of India is that it embodies certain directive principles of state policy, which, though not enforceable through courts of law, are in the nature of moral codes which no really democratic republic would afford to ignore. These principles may be regarded as a body of instructions issued to the Executive and the Legislature for their guidance. They differ from Fundamental Rights in this that whereas the former speaks of certain things which the state

should abstain from doing while the latter speaks of certain things which the state should always strive to do. It is clear from the provisions of Article 37 that these principles shall not be enforceable in any court but nevertheless they are fundamental in the governance of the country, and it shall be the duty of the state to apply them in making laws. The principles may be enumerated as follows

The state shall strive to establish a social order on the basis of justice, social, economic and political. It should be the duty of the state to ensure adequate means of livelihood to all citizens, to regulate the material resources of the community in the greater interest of the public, to ensure equal wages for equal work for all, to protect childhood and youth against exploitation and against moral and material abandonment. The state shall also organise village *Panchayats* and strive to provide for free and compulsory education for all children up to the age of fourteen years. Besides these, it has also been provided that the state shall endeavour to make provisions for education, work, public assistance in the case of unemployment, old age, sickness and disablement, for ensuring just and humane conditions of work and for maternity relief. The state shall also strive to protect the interests, educational and economic, of weaker section of the people, particularly of the Scheduled Castes and Scheduled Tribes, to promote public health and to prohibit the consumption of intoxicating drinks or drugs, to promote agriculture, cottage industry, animal husbandry and prohibit the slaughter of cows and other useful cattle specially milch and draught cattle and their young stock.

Three other provisions in this Part deserve special mention. The protection of monuments, places or objects of artistic or historical interest declared by Parliament of national importance has been made an obligation of the state. *Secondly*, it has been provided that the state shall take steps to separate the Judiciary from the Executive in the Public services. The last article relates to international peace, security, co-operation and arbitration in case of disputes. It shall be the duty of the state to maintain just and honourable relations between nations.

An analysis of the principles reveals the aims for the

realisation of which the new state will strive. The directives do not of course set forth any new ideal, they are rather mere repetitions of the principles enunciated in the Preamble. The directives deal with the concrete steps which the state should take to establish a social, economic and political democracy in India which forms the basis of a true welfare state.

**The Union Executive—The President.** The constitution provides that there shall be a President of India. The President will be elected by the members of an electoral College consisting of (i) the elected members of both Houses of Parliament and (ii) the elected members of the Legislative Assemblies of the states. He will be elected for a term of five years and may be re-elected. The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot. The reason for the adoption of proportional representation in the election of President is that the method will enable the minorities to have a voice in the election of the President.

The constitution lays down that to be eligible for election as President, a person must be a citizen of India, must have completed the age of thirty-five and must possess the qualification necessary for election as a member of the House of the People. The President must not hold any office of profit under the Government of India or under any State Government nor can he be a member of either House of Parliament or of any state legislature. The President is entitled without payment of rent to the use of his residence and a monthly salary of Rupees Ten thousand and such allowances and privileges as may be determined by Parliament by law. But the emoluments and allowances of the President cannot be diminished during his term of office.

The President may be removed from office by impeachment for violation of the constitution. When a President is to be impeached, the charge may be preferred by either House of Parliament and the other House will investigate the charge or will cause it to be investigated. If the House investigating the charge or causing it to be investigated passes

by a two-thirds majority of its total membership a resolution that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from office from the date on which the resolution is so passed. The President may also resign his office by writing under his hand addressed to the Vice-President.

**The Vice-President.** The constitution lays down that there shall be a Vice-President of the Indian Union. He will be elected for 5 years by members of both the Houses of Parliament in a joint meeting in accordance with the system of proportional representation by means of the single transferable vote by secret ballot. The qualifications necessary for eligibility to the office of the Vice-President is almost the same as that of the President excepting the fact that a person seeking election to the office must be qualified for election as a member of the Council of States. The Vice-President may resign his office by writing under his hand addressed to the President. He may also be removed from office by a resolution of the majority of the members of the then Council of States and agreed to by the House of the People.

The Vice-President shall be the *ex-officio* Chairman of the Council of States and shall not hold any other office of profit. In the event of any vacancy in the office of the President by reason of his death, resignation or removal, the Vice-President will act as the President till a new President is elected and assumes office. *Secondly*, when the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President will discharge his function till the President resumes his office. The framers of the Indian Constitution thinking on the same line with the framers of the U.S.A. Constitution has given to the Vice-President the job of presiding over the sessions of the Council of States besides waiting for the death, resignation or removal of his chief.

**Powers of the President.** The powers of the President may be broadly classified under *five* heads, viz., (a) executive powers, (b) legislative powers, (c) financial powers, (d) judicial powers and (e) emergency powers.

*Executive Powers* The President is the chief executive head of the Indian Union and as such all executive action of the Government of India will be expressed to be taken in the name of the President. The Governor of the states of the Union will be nominated by the President. Besides the Governors, the President will appoint the Judges of the Supreme Court and of the State High Courts, the Auditor-General and other high officers of the state. He will be responsible for the administration of centrally administered areas. Besides these, he is to adjust the financial relation between the Centre and the states and to appoint a Finance Commission in the course of two years. In the event of a dispute between different states of the Union regarding the supply of water, the President is to appoint a Commission for the settlement of the dispute. He is to appoint an inter-state Council in order to maintain normal relation between the states and also between the states and the Union. Besides these, the President has been given wide powers to meet emergencies and also for the period beginning from the commencement of the constitution till the new election is held. The Supreme Command of the Defence Forces of the Union is vested in the President who is to exercise the power of declaring war and making peace.

*Legislative Powers* The President is a part of the Legislature which shall consist of the President and two Houses. He may summon the Houses or either House, may prorogue the Houses and dissolve the House of the People. The President may address both the Houses in a joint meeting or address either of them. At the commencement of every session, the President shall address both the Houses assembled together and inform Parliament of the causes of its summons. The President may also send messages to either House of Parliament either in respect to a bill pending in Parliament or otherwise.

A bill passed by both the Houses of Parliament must be assented to by the President. The President may give his assent to a bill or withhold his assent from a bill. But if the bill is passed again by the Houses with or without amendments, the President must not withhold his assent from such

a bill. All money bills other than financial bills require for their introduction into Parliament the previous sanction of the President. But the President cannot withhold his assent from a bill which has been duly passed by Parliament.

When Parliament is not in session, the President has the power to issue ordinances, which will have the same effect as Acts of Parliament. Every such ordinance must be placed before Parliament as soon as it re-assembles and the ordinance will cease to operate at the expiration of six weeks from the re-assembly of Parliament or, if before the expiration of six weeks, resolutions disapproving the ordinance are passed by both the Houses, upon the passing of the second of those resolutions.

*Financial Powers.* At the commencement of every financial year, the President shall cause to be laid before both the Houses of Parliament a statement of the estimated receipt and expenditure of the Union for that year. No demand for grant can be made except on the recommendation of the President. The President has been authorised to distribute between the Union and the states shares from the income tax and to assign to Assam, Bihar, Orissa and West Bengal grants-in-aid in lieu of their jute export duty.

*Judicial Powers.* The President shall have the power to grant pardon, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence (a) in all cases where the punishment or sentence is by a Court Martial, (b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends, (c) in all cases where the sentence is a sentence of death.

*Emergency Powers.* The constitution has conferred upon the President special powers to meet emergencies which may be of three different kinds. *Firstly*, emergencies arising out of war or aggression or threat of both, *Secondly* emergencies arising out of the failure of the constitutional machinery in the states, and *thirdly*, financial emergencies.

(a) Article 352 of the constitution lays down that if the President is satisfied that the security of India or any part



thereof is threatened by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect. The President may make a Proclamation of Emergency even before the actual occurrence of such incidents provided he is satisfied that there is imminent danger thereof. A Proclamation of Emergency may be revoked by a subsequent Proclamation. Such a Proclamation of Emergency must be laid before each House of Parliament and will cease to operate at the expiration of two months unless before the end of that period, it has been approved by both Houses of Parliament. But if the Proclamation of Emergency is issued at the time when the House of the People has been dissolved or if its dissolution takes place during the period of two months following the Proclamation of Emergency, then the Proclamation will cease to operate unless the House of the People approves by a resolution the Proclamation at the expiration of 30 days from the date when the House first sits after its reconstitution.

In the event of the occurrence of such an emergency, the Federal Constitution will be turned into a Unitary one, for, the Proclamation of Emergency will confer upon the Union Parliament the unrestricted power of making laws for the whole of India or any part thereof overriding those state laws which are inconsistent with such laws passed by Parliament. During the period of a Proclamation of Emergency many important Fundamental Rights, such as, freedom of speech, freedom to form association and to acquire, hold or dispose of property, etc., will remain suspended and the citizens' right to move the courts for the enforcement of any of these rights guaranteed by the constitution may be suspended by the President. The President will also have the power to suspend the application of provisions relating to the distribution of revenues between the Union and the states.

(b) Article 356 provides that if the President, on receipt of a report from the Governor of a state or otherwise, is satisfied that a situation has arisen in which the government of a state cannot be carried on in accordance with the provisions of this constitution, the President may by Proclamation (i) assume to himself all or any of the functions of the

government of the state and all or any of the powers vested in or exercisable by the Governor or any body or authority in the state other than the State Legislature and the High Court, and (ii) declare that the powers of the State Legislature shall be exercisable by or under the authority of Parliament. Any such Proclamation may be revoked or varied by a subsequent Proclamation. Every Proclamation under this article will cease to operate at the expiration of two months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament. A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of passing of the second of the resolutions approving the Proclamation. The duration of a Proclamation shall not in any case remain in force for more than three years.

The New Constitution of India, like many other federal constitutions, makes provision for federal control over local governments. It is provided in the Indian Constitution that the President, either at the request of the state Executive or on his own initiative, may assume the powers of the state government by suspending it.

(c) Article 360 states that if the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect. The rules regarding the approval of such Proclamations by Parliament in the case of the two previous Proclamations also apply to this one.

During the continuance of such a Proclamation, the state authorities are required to comply with such directions and to observe such canons of financial propriety as may be issued to them by the President who will have power to issue directions requiring the reduction of salaries and allowances of any class of persons in the employ of the state and also of any class of persons in the employ of the Union including the Judges of the Supreme Court and the High Court.

**Position of the President—A Review of His Powers.** The President of the Indian Union, like his opposite number in

the USA, will be elected indirectly by an electoral College, formed, not in the same way as in the USA by secondary voters, but by the elected members of both Houses of Indian Parliament and of the Legislative Assemblies of states. The President of the Fourth Republic (France) and also the President of the Union of Burma are elected by the two Houses convened together. A considerable section of Indian opinion was in favour of a popularly elected President for India. But as the President will be, unlike the USA President, the constitutional head of the state, and guided by the advice of a Council of Ministers, responsible to Parliament, the necessity of direct election by the people does not arise. The method adopted in India for presidential election is rather unusual inasmuch as the system of proportional representation by single transferable vote is adopted in the case of multi-member constituency. But here it has been adopted only to enable the minority communities to have a say in the matter of Presidential election. The President of India will be elected for a term of five years and may be re-elected. The President may be removed from office by impeachment as is the practice in the USA, but here in India, either House of Parliament will have the power provided the other House prefers the charge but in the USA, it is the Senate which enjoys the exclusive right to impeach the President.

The New Constitution of India has been subjected to scathing criticism especially on the ground of the formidable list of powers that the President will exercise under the New Constitution. The constitution has conferred wide powers,—legislative, executive, financial and emergency, upon the President. Besides, the very fact that the Indian President, unlike his USA prototype, will be the head of a federal government with a strong centre has aroused misgivings in many quarters. Critics of the New Constitution openly declare that the President will be the Cæsar of the Republic, standing the government like a Colossus. True it is that the constitution has vested in the President such powers which will enable him to suspend civil liberty of the people, to suspend the autonomy of the states, to veto laws and to make war and peace. Such a formidable list of

powers vested in the executive head of the state is no doubt frightening, but a close and careful study of the New Constitution will reveal the truth that the above criticism is not a fair and impartial way of stating the nature of the New Constitution.

If we turn to the list of powers vested in the USA President, we shall at once realise the fact that the Indian President is far less powerful than his USA prototype. The American President derives his powers from the constitution which has made provision for a rigid separation of powers. The USA President is the nominee of the nation yet the nation has no control over him. He is not an agent of the legislature dependent on its support but exercises his powers in his own right, free from the control of either the voter or the legislature. He is not bound by the advice of cabinet members who are his subordinates and not colleagues. He may misgovern the country or govern it indifferently, but the President has a constitutional right to his office until the legal expiration of his term. In fact, the USA President exercises a wide range of powers,—executive and legislative,—and these he wields independently of the voters, of the legislature and of his cabinet. Thus it has been said that the President of the USA exercises “the largest amount of authority ever wielded by any man in a democracy.” The Irish President possesses two special powers. He can dissolve the legislature and can refer bills to a popular referendum under certain circumstances and in doing so, he is not required to act according to the advice of the ministers. The French President is required to preside over the meetings of the Council of Ministers and in this respect, he might get some opportunity for influencing the decision of the council.

Now we are in a position to compare the powers of the Indian President with those of the President of the USA and Eire. The Indian President, unlike the Irish President, has not been given any such discretionary power. But the absence of a constitutional provision to the effect that the President will have to exercise his powers according to the advice of the ministers might give the President some scope for exercising his free will. The President of India will be the constitutional head of the Republic and will normally

act according to the advice of the Council of Ministers who will be appointed by the President from among the members of the majority party in the legislature. The critics of the Indian constitution forget the important fact that the form of Government in India being a Parliamentary one, the Council of Ministers will be responsible to the legislature. A ministry cannot be formed unless it has a majority in the legislature and by whose support the ministry will be able to carry out its policy and programme. It is true that the President is not always bound to act according to the advice of the Cabinet but it will be difficult for the President to act contrary to the advice of a ministry, having a majority in the legislature. In case of a conflict between the President and the ministry, the ministry is to resign and the President will have no other alternative but to dissolve the House of the People and order a fresh election. But in case the same party returns to power as a result of the new election, it will be tantamount to a verdict of the people against the President. Under these circumstances, the President will think twice before he chooses to differ with the ministry. Besides, as in the USA, here in India also, the party system is likely to act as a connecting link between the President, the Ministry and the Legislature so that they may not act at cross purposes. Thus the misgivings that have been aroused by the constitutional provision for the formidable list of powers vested in the President are wholly unfounded. The President of India will occupy a position intermediate between that of the President of the Fourth Republic of France who neither reigns nor governs and that of the USA President who governs but does not reign.

### Council of Ministers

Article 74 of the constitution lays down that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The Council of Ministers will not be responsible to any court of law for the advice tendered to the President. The Prime Minister will be appointed by the President who will also appoint other ministers on the advice of the Prime Minister. The ministers must be members of

either House of Parliament and if any of them is not a member of Parliament at the time of his appointment, he must become a member within six months, otherwise at the expiration of the period he will cease to be a minister. It should be noted here that as the Upper House—the Council of States, will include nominated members and for a period of ten years from the commencement of the New Constitution, the Lower House—the House of the People, may also have two nominated members, it is quite possible that the Council of Ministers may include some ministers who need not be elected by the people. The salaries and allowances of ministers are to be determined by Parliament from time to time. The Council of Ministers shall be collectively responsible to the House of the People. The Council of Ministers consists of 20 members, besides six Ministers of State and twelve Deputy Ministers. The departments of the Union Ministry are:—

- 1 External Affairs in charge of the Prime Minister.
- 2 Education and Natural Resources and Scientific Research.
- 3 Defence 4 Health. 5. Home and States 6 Finance.
- 7 Communications 8 Planning and River Valley Schemes.
- 9 Industry 10. Law and Minority Affairs 11 Railway and Transport 12 Works, Housing and Supply 13. Labour
14. Production 15 Food 16 Rehabilitation. 17 Parliamentary Affairs 18 Defence Organisations 19 Information and Broadcasting 20 Agriculture.

### **Powers and Functions of the Council of Ministers**

The functions of the Council of Ministers will be to aid and advise the President in the exercise of his functions. The Council will be mainly a policy-formulating body. It will have to bring about a co-ordination between the activities of the various departments of the Central Government. In short, the Council is charged with the duty of administering the affairs of the Union Government. In addition to its executive and administrative functions, the Council will formulate the legislative programme for each session of Parliament through its power of initiating bills. The ministers are not only the heads of executive departments,

but are also important members of the majority party in the legislature or at least having majority support in the legislature. Important bills are introduced by them who pilot them through the different stages of legislation and get them passed with party support. As in ordinary law-making, so also in financial legislation, the power of the Council is very great. The framing of the Budget is also in the hand of a minister. Any bill either ordinary or financial has little chance of being passed unless it is sponsored by a member of the government party. It will also determine the foreign policy of the government. In short, the cabinet will act as the 'steering committee' of the legislature, with the right to initiate, regulate, control and co-ordinate the various activities of the state.

**The Prime Minister.** It has been expressly provided in the constitution that the Council of Ministers will be headed by a Prime Minister who will be appointed by the President and it is evident that the Prime Minister must be a member of either House of Parliament. As we have already seen that there is a provision for nomination of members to either House of Parliament, the Prime Minister may be a nominated member but it is quite unlikely that the Prime Minister who must needs be a prominent man and a leader of a major political party will get into the ministry by the backdoor method.

The Prime Minister occupies a unique position inasmuch as he is called upon by the President to choose his cabinet colleagues and as such he becomes their leader. He presides over cabinet meetings in which his role is not merely that of a chairman with a casting vote in case of a tie but he has to bring about a compromise and work out a concerted policy either by persuading his dissentient colleagues or by forcing them to resign. The task of the present Prime Minister was more difficult during the initial stage as some of his cabinet colleagues were drawn from outside the party-in-power. In short, the fate of the infant Republic depends to a great extent on the personality of its Prime Minister inasmuch as the wide range of powers vested in the Union Government is exercised mainly on the advice of the Prime

Minister His powers extend not only over the entire domain of Central administration but also over the administration of the states. When the President will assume to himself the functions of the government of a state in accordance with the provisions of Article 356, these functions will also be exercised on the advice of the Prime Minister. So either in the administration of internal affairs or in the determination of foreign policy, the Prime Minister is to play a dominant role and on whose intelligence, tact and honesty will depend the fate of the teeming millions of this vast sub-continent. The Indian Prime Minister is also the leader of the majority party in the legislature. He is therefore the directing force not only in the Cabinet but also in Parliament. The Indian Prime Minister appears to possess two advantages over Prime Ministers in other states. *Firstly*, he is more free to choose his Cabinet colleagues and in this respect, he need not be guided by so many considerations which the British Prime Minister must take into account in forming his Cabinet. *Secondly*, although an equal among equals, the Indian Prime Minister's pre-eminence cannot be challenged. Besides, the absence of a powerful opposition in the legislature has made the position of the Indian Prime Minister far stronger than that of his prototype in other countries. It is too early to hazard any opinion about the future of the office of the Prime Minister of India. The tradition is yet to be built up and much will depend on the way in which the present Prime Minister who is the undisputed leader of the Indian people builds up the tradition of his office in relation to the President, to his colleagues, to the legislature and to the people to whom ultimately he owes his office.

### **The Prime Minister of India and the British Prime Minister.**

The only office with which the office of the Indian Prime Minister may be compared is that of the British Prime Minister who, like the Indian Prime Minister, is the accredited leader of the nation, the leader of the majority party in the legislature, leader of the Cabinet and adviser to the head executive of the state. The likeness of the two offices arises wholly out of the fact that in both the countries, parliamentary system of government prevails and it is this parliamen-



tary system which is responsible for the unique power and position of the two Prime Ministers

The two offices resemble each other in so far as their mode of appointment is concerned. In both the countries, after a general election, the constitutional head of the state—the King in Britain and the President in India sends for the leader of the majority party in the legislature and requests him to form the Cabinet. The Prime Ministers, though practically self-elected, are formally appointed by the head of the executive and other ministers are appointed by the executive head on the advice of the Prime Minister. So both in Britain and in India, the Prime Minister is the result of a double process of election—first, election to the legislature by the voters and second, election as the leader of the majority party which secures for him the office of the Prime Minister. Both of them act as the chief adviser of the head of the executive and discharge formal duties in relation to him. Both the Prime Ministers stand in the same relation with their Cabinets. Although the Prime Ministers possess rank and precedence over other Cabinet colleagues yet they are equal among equals. The Prime Ministers can persuade or compel their Cabinet colleagues to resign but decisions are always made by a majority of votes and not by the Prime Ministers alone. The Indian Prime Minister also stands in the same relation to the legislature as the British Prime Minister inasmuch as both the Prime Ministers are forced to resign together with their entire team if Parliament pass a vote of no-confidence against the Ministry. The Indian Prime Minister, like the British Prime Minister, must not only watch the tone and temper of the legislature but must also feel the pulse of the nation to whom he is ultimately responsible. The Indian Cabinet though much younger than the British Cabinet shows unmistakable signs of Cabinet dictatorship which has already reduced the Indian Parliament merely to a 'registering automation' and almost the same factors are operating in causing a decline in the power of the Indian Parliament.

In one respect, however, the two offices differ and the difference arises out of the fact that whereas the position and powers of the British Prime Minister are based on conventions, the position and powers of the Indian Prime Minister

have been definitely and elaborately laid down in the constitution. The provisions with regard to the appointment of Prime Minister of India and other ministers and also their relation with the President have been elaborately defined in the constitution but in Britain, all these are mainly regulated by conventions.

Again there is another important point of difference between the two offices. The British Prime Minister must always be an elected member of the Lower House, i.e., the House of Commons and he can speak only in that House. But the Indian Prime Minister can address both the Houses and though generally, as the accredited leader of the nation, he must necessarily be an elected member of the Lower House, the Indian Constitution does not expressly forbid the appointment of a nominated member as the Prime Minister of India.

Furthermore, the British Prime Minister is not in charge of any particular department of the government but exercises a general supervision and control over all the departments of the state. But the Indian Prime Minister, in addition to his duties of co-ordination, supervision and control, is in charge of one of the most important departments of the government, namely, the department of foreign affairs, the administration of which is no doubt an arduous task.

The Indian Prime Minister may be said to be more independent in the sense that he has a more free hand in making his will prevail upon the Cabinet and the Parliament. The Prime Minister is the leader of the Congress party—a political party which has an overwhelmingly absolute majority in the legislature by virtue of which, its leader, the Prime Minister, can not only sweep the opposition but also bring his dissentient colleagues to terms. The power and influence of the Prime Minister, of course, vary with his personality. The Prime Minister of India is a man of such towering personality that his leadership and supremacy are almost beyond any challenge but the position of the British Prime Minister may be and very often is threatened either by an equally influential Cabinet colleague or by the leader of a strong opposition.

*Lastly*, another factor is to be taken into consideration in assessing the importance of the two offices. The British

Prime Minister has to his advantage the experience and tradition of a long line of distinguished Prime Ministers who have piloted the ship of the state through storm and stress. This accumulated experience is a source of great strength to the British Prime Minister who can look back to the history of his land for inspiration as well as guidance but the Prime Minister of India has no such tradition which he can utilise to his own advantage and advantage to his country. Nevertheless, the Indian Prime Minister, in the course of a very short span of time, has built up a tradition which has attracted admiring attention from all parts of the globe

**Ministerial Responsibility in the New Constitution.** The New Constitution provides for the collective responsibility of the ministers to the House of the People. In this respect, the Indian system differs from the British system in which the responsibility of the cabinet to the House of Commons is based wholly on convention. Our constitution, in this respect, is more analogous to the constitution of the Fourth Republic of France which fastens the responsibility of the Cabinet to the Lower House. Collective responsibility of the ministers implies the idea that the ministry as a whole "sail in the same boat, they float or sink together". It also means that a proposal put forward by a particular minister must be taken to be a proposal of the government and a defeat of a minister in the legislature means the defeat of the ministry as a whole. Collective responsibility further implies that if a minister fails to see eye to eye with the majority decision, he must either give way to the majority or resign but he must not, on any account, publicly speak or vote against the decision. Such a tradition has already been built up in India. The resignations tendered by some members of the Union Cabinet when they honestly differed from the Prime Minister on the question of the protection of the interests of the East Bengal Hindus have established some of the canons of ministerial responsibility in India.

**The Union Legislature—Parliament.** The Union Legislature consists of the President and a bi-cameral legislature known as Parliament consisting of the Council of States and the House of the People. The Indian Parliament is a sovereign law-making body in so far as it is free from all external

authority. But internally, its supremacy will be restricted, as in all other federations, by the constitution which has defined the limits of its powers. *Secondly*, the sovereignty of Indian Parliament is restricted by Judicial Review. As in the United States, the Supreme Court in India possesses the competence to declare an act of the Indian Parliament null and void, if it violates any of the fundamental rights guaranteed by the constitution. Thus the legislature of India, like that of the U.S.A., is doubly restricted. We might also add that the power of the Indian Parliament has been limited by the existence of state governments which have their independent spheres of activity upon which the Union Parliament cannot normally legislate.

The language to be used in Parliament shall be Hindi or English. After 15 years from the date of the commencement of the constitution, the official language shall be only Hindi unless Parliament otherwise provides. Members having inadequate knowledge of either Hindi or English may, with the permission of the presiding officer, address the House in the language of his province.

**The Council of States—the Upper House.** The Council of States shall consist of not more than 250 members, twelve of whom will be nominated by the President from among persons having special knowledge or practical experience in Art, Letters, Science and Social Service. The Council of States at present consists of 232 members, of whom 220 represent the different states in the following proportion and 12 members are nominated by the President.

#### *States*

Andhra Pradesh—18, Assam—7, Bihar—22, Gujrat—11, Maharashtra—16, Kerala—9, Madhya Pradesh—16, Madras—17, Mysore—12, Orissa—10, Punjab—11, Rajasthan—10, Uttar Pradesh—34, West Bengal—16, Jammu and Kashmir—4 = 213

#### *Territories*

Delhi—3, Himachal Pradesh—2, Manipur—1, Tripura—1

Nominated by the President

The qualifications necessary for election to the Council of States are that a candidate must be a citizen of India and must be of thirty years of age. The Council will be a permanent body, not subject to dissolution, with one-third of its members retiring every two years. The Vice-President of the Republic will be the *ex-officio* Chairman of the Council of States which will elect one of its members as Deputy Chairman.

**The House of the People—The Lower House.** The House of the People shall consist of not more than 500 members elected directly by the voters in the state on the basis of adult suffrage. All citizens who have attained the age of 25 and are not otherwise disqualified will have the right to vote. For purposes of election each state will be divided into a number of territorial constituencies and the number of members to be allotted to each such constituency shall be so determined as to ensure that there shall be not less than one member for every 75,000 of the population. This higher limit of 75,000 has been removed by the second constitutional amendment Act of 1952 with a view to adjusting the increase in population to representation. It may be pointed out here that in England, roughly speaking, there is one representative for every 70,000 of the population, while in the U.S.A., there is one for every 3,18,000. Although the proportion of electoral representation to population is much less in India in comparison with England and the U.S.A., nevertheless it must be said that the New Constitution has made rapid advance over the previous arrangement. In spite of the democratic character of the House of the People, it must be noted here that the constitution has made special provision for the reservation of seats in the Lower House for the members of the Scheduled Castes and Scheduled Tribes in the tribal areas in Assam and also for the nomination of not more than two representatives from the Anglo-Indian communities. A representative must be a citizen of India and must be not less than 25 years of age. Unless sooner dissolved, the normal duration of the House will be five years. But this period may be extended by Parliament by law while a Proclamation of Emergency is in operation, for a period of one year at a time but not exceeding in any case beyond a period of six months.

after the Proclamation has ceased to operate. The House will elect its Speaker and Deputy Speaker. The allocation of seats between the different states of the Union is in direct proportion to their population and the distribution is given below.—

#### *States*

Andhra Pradesh—43, Assam—12, Bihar—53, Gujarat—22, Maharashtra—44, Kerala—18, Madhya Pradesh—36, Madras—41, Mysore—26, Orissa—20, Punjab—22, Rajasthan—22, Uttar Pradesh—86, West Bengal—36, Jammu and Kashmir—6.

#### *Territories*

Delhi—5, Himachal Pradesh—4, Manipur—2, Tripura—2, Andaman—1, Laccadives—1, Anglo-Indians—2, Tribals of Assam—1 = 505

The number of seats captured by the different parties in the Lok Sabha on the basis of the last general election is roughly

Congress Party	366 seats
Communist	27 „
P. S. P	20 „
Jana Sangh	4 „
Others including Forward Block, Hindu Mahasabha, Scheduled Castes Federation, Independents, etc	88 „

**Privileges of Members of Parliament.** Members of Legislatures of all countries enjoy certain privileges and immunities in order to enable them to discharge their legislative and deliberative functions properly. The most important of these privileges is the freedom of speech. No member can be sued in a court of law for anything said or any vote given by him either in the legislature or in any of its committees. Nor will he be liable in respect of any publication by or under the authority of the House. Besides these, the members of the Indian Parliament will enjoy such privileges as are enjoyed by M.P.'s in England till the Indian Parliament defines the privileges and immunities by its own law.

**Powers of the Indian Parliament.** The Indian Parliament is competent to make all laws regarding the subjects in the

Union List and also on all subjects included on the Concurrent List. A bill in order to become an Act must be passed by both the Houses of Parliament. If a bill is amended by one House, it must be passed by both the Houses with or without amendment or with such amendments only as are agreed to by both Houses. The power to summon or to prorogue the Houses of Parliament is vested in the President of the Union. The President can also dissolve the House of the People. The constitution has made a special provision for an address by the President of the Union at the beginning of every session of Parliament corresponding to the speech from the Throne in British Parliament and for a debate on such address. All bills excepting money bills may originate in either House of Parliament and are to be passed by both the Houses and assented to by the President before it becomes an Act. In case the Houses fail to come to an agreement on a particular bill, money bills excepted, the President may call a joint sitting of both Houses and if the bill with such amendments, if any, as are agreed to in a joint sitting, is passed by a majority of the members of both Houses present and voting, it shall be deemed to have been passed by both the Houses. In case of a joint sitting of both Houses, the Speaker or Chairman or any other person presiding over such occasion will have only a casting vote in case of a tie. The quorum for either House will usually be one-tenth of the total membership of the House.

When a bill has been passed by both Houses, it will be transmitted to the President for his approval. The President may give his assent to a bill or withhold his assent from the bill and in the latter case he is to return the bill to Parliament as soon as possible with his recommendation. Parliament will then reconsider the bill. After the bill has been reconsidered and passed by Parliament with or without amendment, it will be placed before the President again for his assent and the President shall not withhold his assent from the bill. Thus the executive in India will exercise a suspensive veto power.

All money bills are to be introduced in the House of the People. When a money bill has been passed by the House, it

will be sent to the Council of States for being returned with its recommendations within 14 days. In case the House of the People does not accept any of the recommendations of the Council of States, the money bill will be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

**Financial Procedure.** In respect of every financial year, the President shall cause to be laid before both Houses of Parliament an annual statement showing the estimated receipt and expenditure for the Union Government for that year. The estimated expenditures are placed under *two* distinct heads— sums necessary to meet (i) the expenditure charged upon the Consolidated Fund of India and (ii) other expenditures. The items included in the Consolidated Fund are (a) the salary, allowances and other expenditure relating to the office of the President, (b) the salaries and allowances of the Speaker and the Deputy Speaker of the House of the People and the Chairman and the Deputy Chairman of the Council of States, (c) the salaries and allowances of persons payable to or in respect of Judges of the Supreme Court, (d) the pensions payable to or in respect of Judges of the Federal Court, (e) the pensions payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of the constitution exercised jurisdiction within any area included in the states for the time being specified in Part A of the First Schedule, (f) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor-General of India, (g) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal, (h) debt charges, (i) any other expenditure declared by this constitution or by Parliament by law to be so charged. Besides these items, the administrative expenses of the Supreme Court and Privy purses promised to the Rulers of the Native States and the expenditure of the Union Public Service Commission shall constitute items charged upon the Consolidated Fund of India.

The expenditures charged upon the Consolidated Fund are not required to be voted by the legislature which can



however discuss the items. All other items are to be voted upon by the legislatures. The estimates relating to other expenditures shall be submitted to the House of the People in the form of demands for grants and the House may assent or refuse to assent to any of the demands or reduce its amount. But no demand for grant can be made except on the recommendation of the President. After the demand for grants have been voted by the House, the authorisation of the expenditure will be done, following the practice in the United Kingdom and the Dominions, by an Appropriation Act. Provisions have also been made authorising the President to place before Parliament supplementary, additional or excess grants and the usual procedure is to be gone through in getting them passed. The House of the People has also been authorised to make advance grants or even exceptional grants in accordance with the normal financial procedure.

✓ **Relation between the two Houses of Parliament.** The Indian Parliament is a bi-cameral legislature consisting of the Council of States and the House of the People. The former represents the component states while the latter represents the nation. Excepting money bills, the two Houses enjoy co-equal power in respect to ordinary law-making. The House of the People in India like the British House of Commons does not possess the power to over-rule the Council of States in ordinary law-making. In case of disagreement between the two Houses, the President of the Union is to convene a joint meeting of the two Houses and the issue on which the disagreement arises will be decided by a majority of members present and voting and the House of the People being the more numerous body is likely to predominate at such joint meetings.

So far as money bills are concerned, they must originate in the Lower House. The Upper House in India, however, can amend a money bill and the amendment will be valid only if the Lower House approve the amendment. Money bills transmitted to the Council of States after it has been passed by the House of the People must be returned by the Council within 14 days with or without amendment. So the Upper House cannot even delay the passage of a money bill for more than 14 days. In England, the House of Lords

has been given by the Parliament Act of 1911 only a month's time to consider a money bill but it has no power to amend money bill. The Senate in the USA possesses the power to amend money bills. Besides, the Council of Ministers will be responsible to the House of the People. In India, the position of the Upper House has been weakened in another way. In England, in the USA, it is the special prerogative of the Upper House to try impeachment cases; but in India, the constitution expressly provides that when a President is to be impeached, the charge is to be preferred by *either* House of Parliament and the other House will investigate the charge or cause it to be investigated. So in India, the Lower House is the more powerful one and is likely to predominate over the government.

### The Union Judiciary

**The Supreme Court.** The existence of an independent and impartial judiciary is an essential condition to a federal form of government. The Federal Judiciary is to act as the custodian of the constitution, protecting the supremacy of national law, defending the reserved powers of the states and acting as the guardian of the constitutional system in general. The New Constitution of India has therefore made a provision for a Supreme Court.

The Supreme Court of India consists of a Chief Justice and seven other judges all of whom are appointed by the President in consultation with such Judges of Supreme Court and High Courts in the states as the President may deem necessary. The number of Judges may however be varied by Parliament by law. Judges of the Supreme Court are to retire at the age of 65. The qualifications necessary for a Judge of the Supreme Court are that a person (a) must be a citizen of India and has been at least for five years a Judge of a High Court, or (b) an advocate of a High Court or of two or more High Courts in succession at least for ten years, or (c) in the opinion of the President a distinguished jurist. Persons holding the office of a Judge of the Supreme Court have been expressly forbidden to practise in any court in India as a lawyer. The constitution also provides for the ap-

pointment of *ad hoc* Judges for specific purposes and also requires the attendance of retired Judges with their consent. The salary of the Chief Justice will be Rs. 5,000 per month and that of other Judges Rs. 4,000 per month. The Supreme Court will sit in Delhi or in any such place as the Chief Justice will decide with the approval of the President

**Functions of the Supreme Court.** The Supreme Court will have an original as well as an appellate jurisdiction. Its original jurisdiction will extend over all disputes (a) between the Government of India and one or more states, or (b) between the Government of India and any state or states on one side and one or more other states on the other; or (c) between two or more states, if and in so far as the dispute involves any question, whether of law or of fact, on which the existence or extent of a legal right depends

The original jurisdiction of the Supreme Court shall however not extend to (a) a dispute to which a state specified in Part B of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement *Sanad* or other similar instrument which was entered into or executed before the commencement of this constitution and has, or has been, continued in operation after such commencement, (b) a dispute to which any state is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *Sanad* or other similar instrument which provides that the said jurisdiction shall not extend to such a dispute

The Supreme Court has also appellate jurisdiction in all cases from every High Court involving questions of law as to the interpretation of the constitution. Besides this, the Supreme Court will exercise its appellate jurisdiction both in (i) civil and (ii) criminal cases. In civil cases, an appeal may be made to the Supreme Court from the judgment of a High Court provided the latter certifies that (a) the amount or value of the subject-matter in dispute is not less than Rs. 20,000 or such other sum as may be specified by Parliament, or (b) the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value, or (c) that the case is a

fit one for appeal to the Supreme Court, and where the judgment, appealed from affirms the decision of the court immediately below, in any case other than a case referred to in item C, if the High Court further certifies that the appeal involves some substantial question of law. It has also been provided that no appeal shall lie to the Supreme Court from the judgment, decree or final order of one judge of a High Court.

In regard to criminal matters, an appeal shall lie to the Supreme Court from the judgment of a High Court, if the latter (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death, or (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death, or (c) certifies that the case is a fit one for appeal to the Supreme Court. Parliament has been authorised to enlarge the appellate jurisdiction of the Supreme Court in criminal cases.

Besides these, the constitution has conferred upon the Supreme Court wide powers, exercisable in its discretion, to grant special leave to appeal from any judgment, decree, determination, sentence, or order in any case or matter passed or made by any court in India.

Parliament has been empowered to confer on the Supreme Court power to issue directions, order or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, or any of them for the enforcement of Fundamental Rights.

It has also been provided that the Supreme Court will have the power of reviewing any judgment pronounced by it and the law declared by it shall be binding upon all courts in India.

The Supreme Court will also exercise its advisory function in so far as it will be called upon by the President to give opinion whenever the latter will seek the opinion of the court on important questions of law and fact. The judgments and opinion of the Supreme Court must be declared in open court.

**The Role of the Supreme Court of India.** The Supreme Court of India plays a part of utmost importance in the Judicial administration of the country. The Supreme Court stands at the apex of an integrated judicial hierarchy vested with the power of acting as the highest court of appeal in all cases arising out of Union Laws and State Laws. Its main function is to see that laws are fairly administered and no person seeking justice is denied of it by any court in the country. The integrated structure of the Supreme Court was designed to secure the above ends. The Supreme Court because of its integrated structure acts as a unifying force inasmuch as laws declared by it are binding upon all courts. The Supreme Court also holds the balance between the Union and the Component States by maintaining the constitutional division of powers between the two sets of government. *Lastly*, the Court acts as the custodian of the constitution and protector of the liberties of the people. With this end in view, the Supreme Court and the High Courts have been authorised to issue various kinds of writs on individuals, associations and even on governments for the enforcement of Fundamental Rights.

The role of the Supreme Court in respect to the protection of the rights of the citizens and the maintenance of the constitution makes judicial review by the court necessary. In India, the scope of judicial review is however very limited in view of the exhaustive enumeration of powers of the Union and the States by the constitution and also in view of the comparatively easy method by which the powers of the Union Government may be enlarged especially in times of emergency. But the Supreme Court has the power to nullify acts of both Union Parliament and State Legislatures on the ground that such laws are contrary to the provisions of the constitution. Courts in England or France can interpret laws but they have no power to declare a law as unconstitutional on any ground whatsoever. But in India the Supreme Court has the power to question the legislative competence of the Union as also of the State Legislatures.

In addition to its duties as a tribunal for settling inter-state disputes and matters violating the Fundamental Rights.

the Supreme Court is the highest tribunal of appeal in civil and criminal cases. But appeal to it may be made either by a certificate of a High Court or by special permission of the Supreme Court.

In the United States of America, there is a double system of courts, viz., Federal Courts and State Courts but in India, there is a single system of court. The USA Supreme Court has, at least, in one respect greater powers than the Supreme Court of India.

In accordance with "due process of law" clause in the constitution, the USA Supreme Court can extend its jurisdiction over both matters of procedure and also matters of substantive laws. This extraordinary power vested in the judiciary has enabled it to play the role of a super-legislature in so far as the Supreme Court interprets the constitution and the law and in the guise of interpretation, it seeks to determine the social and economic policy of the state.

But in India, the framers of the constitution deliberately avoided the phrase "due process of law" which was replaced by "according to the procedure established by law". Thus the Supreme Court of India can declare a law null and void only if the law is repugnant to any provision of the constitution but it has no power to question the fairness or natural justice of Parliamentary legislation.

Thus the Supreme Court of India is in the last analysis an interpreter of the constitution. The framers of the constitution intended to make it a powerful body designed more to act as a check on arbitrariness of the executive and violations of the constitution than on the legislative enactments. In one of his speeches in the Constituent Assembly, the present Prime Minister declared that they did not like to make the judiciary a third chamber of the legislature.

**Other Officers of the Union Government.** The constitution provides for the appointment by the President of (i) an Attorney-General for India and (ii) a Comptroller and Auditor-General of India. The duty of the former will be to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character as may be assigned to him by the President. He will hold

office during the pleasure of the President and receive such remuneration as may be determined by the President

The Comptroller and Auditor-General will perform duties and exercise powers in relation to the accounts of the Union and of the States and of any authority or body as may be prescribed by Parliament. His salary and other expenses of his office will be determined by Parliament and shall be charged upon the Consolidated Fund of India.

### **Zonal Council**

Under the States Reorganisation Act the whole country has been divided into five zones and in each of these zones a Zonal Council has been set up.

The Zones are

1 **The Northern Zone.**—It comprises the States of Punjab, Rajasthan, Jammu and Kashmir, Delhi and Himachal Pradesh.

2 **The Central Zone.**—This zone includes the two States, Uttar Pradesh and Madhya Pradesh.

3 **The Eastern Zone.**—It comprises the States of Bihar, Orissa, West Bengal, Assam, Manipur and Tripura.

4 **The Western Zone.**—It comprises Gujarat, Maharashtra and Mysore.

5 **The Southern Zone.**—It comprises the States of Andhra Pradesh, Madras and Kerala.

### **Composition and Functions of the Zonal Councils.**

Each of these Zonal Councils will consist of (1) a Minister of the Union Government nominated by the President, (2) Chief Minister of each of the states forming the zone, in the case of the northern zone, two Ministers nominated by the Sadr-i-Riasat of Jammu and Kashmir, and in other states, two ministers nominated by the State Governors and in those territories where there is no ministry, three members nominated by the President, (3) two members nominated by the President from the previous Part C States which have now merged with a State, (4) in the case of Eastern Zone, the Advisor to the Government of Assam on Tribal interest.

The Union Minister nominated by the President will be the chairman of the Zonal Council.

These Councils will provide forum for inter-state co-operation and strive, with the co-operation of the Union Government, for the settlement of inter-state disputes and the formulation of inter-state development projects. They are also authorised to deal with any other inter-state problem arising out of the enforcement of the States Reorganisation Act. Decision of the Zonal Councils are taken by majority votes, the Chairman having a casting vote in case of a tie. The decisions of the Councils are to be communicated to the Centre as well as to the States concerned. Two or more Zonal Councils may hold a joint meeting for discussing matters affecting their common interest.

A Secretariat whose expenses are borne by the Centre is also attached to each Council to take up the work in the light of the decisions at the various meetings.

### **Administration of States.**

The machinery of government of the states is similar to that at the centre inasmuch as a Parliamentary system of government is prescribed for the states with a Governor at the head, who will be aided and advised by a Council of Ministers, responsible to the Lower House of the State Legislature.

**The Governor—the State Executive.** The executive authority in a state will be vested in the Governor who will be appointed by the President of India and will hold office during the pleasure of the President. But his tenure of office will be 5 years. A Governor must be a citizen of India and must have attained the age of 35 before his appointment. He cannot be a member of either House of Legislature. The Governor will have his official residence, free of all charges, and will receive a salary of Rs 5,500 per month and other allowances until Parliament determine by law his emoluments and allowances.

### **Appointment of the Governor.**

The appointment of the state Governors by the President is pointed out by the critics of the system as a gross violation of the true federal principle. A federal government implies provincial autonomy which cannot function properly when the state Governors are the agents of the Central Government. In the U.S.A., state Governors are all elected by the



people Election of the Governor by the people secures independence of the executive from central control and makes the system more in keeping with democratic principles The Indian system of appointment of the Governors not only makes the state executive subordinate to the Central Government but makes it undemocratic as well

The argument which is usually advanced in support of the system is that state Governors in India occupy a constitutional position—a position of complete irresponsibility The Council of Ministers in the states form the real executive, the members of which are elected by the people and are answerable and accountable to the state legislatures Under these circumstances, the appointment of Governors by popular election seems to be superfluous Besides, the Governor is to play the role of an impartial umpire and as such it is desirable that his appointment should be made independent of party influence

**Powers of the Governor.** The Governor will be the executive head of a state and to aid and advise him in the discharge of his functions, there shall be a Council of Ministers in every state The constitution provides that ordinarily the Governor will be guided by the advice of his Council of Ministers, “except in so far as he is by or under the constitution required to exercise his functions or any of them in his discretion” But it may be pointed out here that excepting in Assam where the Governor will act in his discretion only in respect of the administration of certain frontier tracts, the Governors of other states are not required by the constitution to act in their discretion In the absence of any constitutional provision for exercising their discretion in any matter, it is implied that the Governors of states are required by the constitution to act in accordance with the advice of their ministers So it is expected that the Governors of states will act as constitutional heads of states, bound by the advice of the ministry The Governor will not be able to disregard the advice of the ministry, backed by a Legislature consisting of the representatives of the people The Powers conferred upon the Governor by the constitution may be classified under *four* heads —

*Executive Powers* The executive power of a state will be vested in the Governor and he is to exercise these powers either directly or through officers subordinate to him. The Governor is to exercise his authority over those matters in respect to which the Legislature of the state will have power to make laws. But so far as the subjects included in the Concurrent List are concerned, the executive power of the state will be subordinate to that of the Union.

*Legislative Powers.* The assent of the Governor is necessary in making laws. A bill duly passed by the State Legislature must be presented to the Governor for his approval. The Governor may give his assent to a bill or withhold his assent from a bill or he may reserve the bill for the President's consideration. The Governor has also the power to return the bill for its reconsideration by the legislature and if the bill is passed by the legislature with or without amendment, the constitution provides, the Governor must not withhold his assent from such a bill. It may be mentioned here that similar provision has been made in respect to bills passed by the Union Parliament after reconsideration. Money bill cannot be introduced in the legislature unless it has been authorised by the Governor.

If at any time, when the legislature is not in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require. But all such ordinances will cease to operate at the expiration of six weeks from the reassembly of the legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council. It has also been provided that the Governor shall not, without instructions from the President, promulgate any such ordinance if (a) a bill containing the same provisions would have required the previous sanction of the President for its introduction into the legislature, or (b) the Governor would have deemed it necessary to reserve a bill containing the same provisions for the consideration of the President, or (c) an Act of the legislature of the state

containing the same provisions would have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

*Financial Powers* The state Budget showing the annual financial statement is caused to be laid before the State Legislature by the Governor. No demand for grant can be made except on the recommendation of the Governor who has also been authorised to recommend to the legislature requiring the latter to sanction supplementary or additional expenditure or demand for excess grants.

\* *Judicial Powers* The Governor of a state shall have the powers to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.

**Council of Ministers.** There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under the constitution required to exercise his functions or any of them in his discretion. The Council of Ministers will not be responsible to any court of law for the advice tendered to the Governor. The Chief Minister will be appointed by the Governor and other Ministers will be appointed by the Governor on the advice of the Chief Minister and the ministers will hold office during the pleasure of the Governor. The ministers must be members of the State Legislatures. If a minister fails to become an elected member of the legislature within six months from the date of his appointment as a minister, he will cease to be so at the expiration of the said period. Each of the ministers will be in charge of one or few departments and will be collectively responsible to the Legislative Assembly. So it will be difficult for a Governor to dismiss a ministry so long as it is backed by a majority in the legislature. It has been provided that the ministers will receive, until the legislature otherwise provides, such salaries and allowances as were payable to such ministers for the corresponding Province.

**State Legislature.** For every state there shall be legislature which shall consist of the Governor, and in the states of Bihar,

Maharashtra, Madras, Punjab, Uttar Pradesh, West Bengal, Andhra Pradesh, Mysore, Madhya Pradesh two Houses and in other states, there will be only one House. Where there are two Houses in a state, one will be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it will be known as the Legislative Assembly. Parliament may however by law provide for the abolition of the Legislative Council of a State or for the creation of a Council in a state where there is no Council, provided the Legislative Assembly of the state demand by a substantial majority of its members.

**The Legislative Assembly.** The total number of members in the Legislative Assembly of a state must in no case be more than five hundred or less than sixty. Members will be chosen by direct election from territorial constituencies on the basis of not more than one representative for every seventy-five thousand population. Members will be elected on the basis of adult franchise, i.e., by citizens who have attained the age of twenty-one and is not otherwise disqualified.

In spite of the democratic character of the State Assemblies, it must be pointed out that the constitution has made provision for the reservation of seats in the Legislative Assemblies of states for the members of the Scheduled Castes and certain Scheduled Tribes and also for the nomination by the Governor of a state of members from the Anglo-Indian Community. Unless sooner dissolved, the duration of the Assembly shall be five years. This period may, however, be extended, while a Proclamation of Emergency is in operation, by Parliament by law for a period not exceeding one year at a time and not exceeding in any case beyond a period of six months after the termination of a Proclamation of Emergency. The Assembly will elect a Speaker and a Deputy Speaker from among its members.

**The Legislative Council.** The total number of members in the Council shall not exceed one-fourth of the total number of members in the Legislative Assembly of the state but in no case shall be less than forty. The Council shall be a permanent body and not subject to dissolution, one-third of its members retiring every two years. Until Parliament other-

wise provides by law, the Legislative Council of the state will be composed in the following way. (a) As nearly as one-third of the members will be elected indirectly by local authorities, such as, municipalities, district boards, etc.

(b) One-twelfth of the members is to be elected by persons who have been for at least three years' graduates of an Indian University or its equivalent

(c) One-twelfth is to be elected by persons who have been for at least three years engaged in teaching in schools not below the secondary standard

(d) One-third is to be elected by the Legislative Assembly from among persons who are not members of the Assembly

(e) The rest shall be nominated by the Governor from among persons having special knowledge or practical experience in literature, science, art, co-operative movement and social service. Members will be elected in accordance with the system of proportional representation with the single transferable vote. The Council will elect two of its members to be the Chairman and Deputy Chairman respectively.

The members of State Legislature will enjoy the same privileges as are enjoyed by those of the Union Parliament and will receive such salaries and allowances as may from time to time be determined by the legislature by law.

#### COMPOSITION OF LEGISLATURES OF DIFFERENT STATES

Name of States	Legislative Council	Legislative Assembly
Andhra Pradesh	90	302
Assam	×	105
Bihar	96	319
Gujarat	×	132
Maharashtra	78	264
Kerala	×	127
Madhya Pradesh	×	289
Madras	63	205
Mysoore	63	209
Orissa	×	140
Punjab	51	154
Rajasthan	×	176
Uttar Pradesh	108	431
West Bengal	75	256
Jammu and Kashmir	36	75

The composition of the legislatures of the different states have been determined as given above under the Legislative Councils Act 27 of 1957

**Powers of State Legislature.** Generally speaking, the state legislatures will be supreme in their own sphere, i.e., in the state list of subjects but it must be pointed out that its supremacy within the sphere specified by the constitution will be subject to the following limitations

*Firstly*, bills which seek to impose restrictions on the freedom of trade, commerce, etc., will require the previous sanction of the President for their introduction in the State Legislature. *Secondly*, those state laws, such as, relating to acquisition of property by the state or relating to concurrent matters, etc., which may be reserved for President's consideration, will be invalid unless they have received his assent. *Lastly*, during a Proclamation of Emergency arising out of a grave situation or during a Proclamation due to a failure of the constitutional machinery of the state, the President has been empowered to authorise the Union Parliament to legislate on state subjects

A bill in order to become an Act must be passed by both the Houses of Legislature of the state where there are two Houses. The Legislative Council has been given a subordinate position not only in respect to money bills but also in respect to ordinary bills. If a bill duly passed by the Assembly is either rejected by the Council or passed by it with amendments to which the Assembly does not agree or more than three months elapse from the date on which the bill is laid before the Council without the bill being passed by it, the Assembly may again pass the bill in the same or subsequent sessions with or without amendments suggested by the Council and then send it to the Council in the form in which the bill has been passed by it. If such a bill is again rejected by the Council or passed by it with amendments to which the Assembly does not agree, or if more than one month elapse from the date on which the bill is laid before the Council, without being passed by it, the bill shall be deemed to have been passed by both the Houses in the form in which it was passed by the Assembly with such amendments, if any, as have been made or suggested by the Council and agreed to by the Legislative Assembly. The Council has not the power to initiate money bills which can be introduced only in the Assembly. The powers of the

Legislative Council in regard to money bills are similar to those of the Council of States in the Union Parliament. The Council has been given only fourteen days time to consider a money bill and amendments made to money bill by the Council may or may not be accepted by the Assembly.

A bill in order to become an act must receive the assent of the Governor who may assent to or withhold assent from, or reserve the bill for the President's consideration. The Governor may send a bill, other than a money bill, back to legislature for reconsideration and if the legislature pass that bill again with or without amendments and present it to the Governor for the second time, the Governor must not withhold his assent from the bill.

The procedure in regard to finance is also similar to that in the centre. The Governor will cause to be placed before the State Legislature an annual financial statement showing the estimated receipts and expenditures of the state for that financial year. The estimated expenditures are placed under two distinct heads (a) the expenditure charged upon the Consolidated Fund of the State and (b) other expenditures. The former includes such items as the emoluments and allowance of the Governor, salaries and allowances of the Speaker and Deputy Speaker or the like, salaries of High Court Judges, debt charges, etc. The State Legislature can discuss these items but cannot vote upon them. Other expenditures must be submitted to the Legislative Assembly in the form of demand for grants which can be made only on the recommendation of the Governor. The rest of the procedure is the same as in the case of the centre. Here in the states also, the Governor has the power to recommend to the legislature for supplementary or excess grants.

The quorum in the case of the State Legislatures will be ten members or one-tenth of the total number of members of a House, whichever is greater. The business of the State Legislatures will be transacted in the languages of the state or in Hindi or in English. But the Speaker may authorise a member to address the Houses in his mother-tongue.

**Status of Jammu and Kashmir.** The State of Jammu and Kashmir acceded to the Indian Union after the Partition when the state was overrun by tribal hordes of the North-West

The Government of India took prompt steps and Kashmir was saved from being completely occupied by the invaders who, it transpired later on, were the agents of Pakistan which is still a party to the Indo-Pak dispute over Kashmir before the UN. As a result of prolonged negotiations with the leaders of the state, the jurisdiction of the Union Government which was limited up to July, 1952, to only defence, communication and foreign affairs, have been extended to subjects, such as, citizenship, Fundamental Rights, position of the head of the state, jurisdiction of the Supreme Court, etc.

With regard to citizenship, it is agreed that Indian citizenship will extend to the people of the state but the state reserves the right to define and regulate the privileges of its subjects especially in respect to those persons who will return from Pakistan.

Fundamental Rights enumerated in the Indian constitution will apply to the state which of course may take steps for the safety of the state and also for safeguarding land reforms.

It has been agreed to terminate the institution of dynastic rule in Kashmir. Accordingly, the head of the state will be recommended by the state legislature and recognised by the President. The present head of the state was also recommended by the State Legislature and then recognised by the President. In other respects, the position of the head of the state resembles that of the head of former Part B States.

The Supreme Court of India will act as the final court of appeal in the state and in addition to this function, it will exercise its original jurisdiction in disputes mentioned in Article 131 of the constitution and also in connection with the application of Fundamental Rights in the state.

The President's prerogative of mercy will apply to the state and his Emergency Powers will also extend to the state but when such a declaration of emergency will be caused by internal disturbances, the previous consent of the state will be necessary.

The state will maintain a separate flag as a symbol "for historical and sentimental reasons" but the Union flag will be recognised as supreme.

It should be noted here that the terms of agreement are



not at all rigid but may be changed according to necessity. Thus by the terms of agreement of 1952, the State of Jammu and Kashmir was brought on a line with other previous Part B States

### **Administration of Centrally-administered Areas.**

The administration of these areas will be conducted by the President of India through his agents specially appointed for this purpose and the Indian Parliament will be the sole law-making authorities for these areas

Under the Territorial Councils Act, 1956, Territorial Councils have been provided to the Union territories of Himachal Pradesh, Manipur and Tripura. Delhi will have a Corporation for which a special act has been passed. These Councils and Corporation of Delhi will be elected on the basis of universal adult franchise. The territorial Council of Himachal Pradesh will consist of 41 members of whom 12 seats will be reserved for members of the Scheduled Castes. The Councils of Manipur and Tripura will consist of 30 members, of whom not more than 4 may be nominated by the Centre. These Councils and Corporation in Delhi will function under an elected Chairman and will be responsible for the conduct of local affairs. They will also form the electoral colleges for the election of members to the Council of States from the territories

**State Judiciary.** The Judiciary in the states will consist of a High Court in each state and other subordinate courts. Every High Court will consist of a Chief Justice and other Judges, the number of whom will be fixed by the President from time to time. Judges will be appointed by the President after consultation with the Chief Justice of India and the Governor of the state. Judges will hold office up to the sixtieth year and are forbidden to plead or act in any court within the jurisdiction of India after retirement. The High Courts will be the highest courts of appeal in both civil and criminal matters in the states and the High Courts of Calcutta, Bombay and Madras will have both original and appellate jurisdiction. Below the High Courts, there are civil and criminal courts in every district. For criminal cases, there are Session Judges. Court with original and appellate jurisdiction. Below it, there

are magistrates court and the Bench Court of the Union Board constitutes the lowest rung of the judicial organisation. For civil cases, there are District Judges Court with original and appellate jurisdiction below which there are Munsifs Court. The village Union Court is the lowest court which tries petty civil cases.

**Amendment of the Constitution.** As we have already seen, the Indian Constitution stands midway between the extreme rigidity of the U S A constitution and the extreme flexibility of the British constitution. *Firstly*, it has been provided in the New Constitution that the constitution can be amended only by the introduction of a bill in either House of Parliament. Article 368 lays down that if a bill proposing an amendment is passed by a majority of total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the constitution shall stand amended in accordance with the Bill. *Secondly*, a Bill which seeks to amend any of the following provisions will also require ratification by the legislatures of at least half the number of states under Governors before the Bill is presented to the President for assent.

(a) Articles 54 and 55 which deal with Presidential election

(b) Articles 73 and 162 which deal with the extent of the executive powers of the Union and of the states

(c) Article 241 which deals with the High Courts

(d) Chapter IV of Part V and Chapter V of Part VI which deal with the Union Judiciary and State High Courts respectively

(e) Chapter I of Part XI which deals with legislative relations between the Union and the States

(f) Any of the Lists in the Seventh Schedule, i.e., the Legislative Lists

(g) Article 368 itself which makes provision for constitutional amendment

*Thirdly*, there are certain matters which, if they require amendment, may be amended in the ordinary process of legislation without going through a special procedure. The for-

mation of new states, reorganisation of existing states, framing the constitution of Part 'C' States of the First Schedule or the creation or abolition of Upper House in any state are some of the matters which the Indian Parliament can amend in the ordinary process of law-making

### **Amendments to the Indian Constitution**

Since the inauguration of the constitution in January, 1950, the Indian constitution has been amended several times, a brief account of which is given below

**1. Constitution (First Amendment) Act, 1951**—By this Act, Article 19 of the original constitution dealing with the exercise of freedom of speech and expression was amended in such a way as to impose reasonable restrictions on freedom of speech and expression in the interest of the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. The amendment further authorises the state to make special provision for the advancement of any socially or educationally backward classes of citizens. This amendment also empowers the state, to acquire, after payment of due compensation, any private property including industrial and business firms for public purpose.

### **2. Constitution (Second Amendment) Act, 1952**

This amendment sought to amend Article 81 with a view to readjusting the scale of representation in the House of the People. Owing to an increase in the number of population as recorded by the Census of 1951, the upper limit of representation was abolished. The present limit is that there shall be not more than one member for every 500,000 people.

### **3. Constitution (Third Amendment) Act, 1954**

This amendment act transferred control of some of the indigenous and imported goods like food-stuff, oil-seeds, oil, raw jute, to the Concurrent List to enable the Centre to exercise full control over these industries.

### **4. Constitution (Fourth Amendment) Act, 1955**

The defect of the first amendment with regard to the acquisition of private property by the state was removed by this amendment. The fourth amendment was intended to

meet objections raised by Courts on questions relating to acquisition of private property and Articles 31, 31A and 305 were amended.

### **5. Constitution (Fifth Amendment) Act, 1955**

The fifth amendment empowered the President to fix a time limit for state legislatures to express their views in proposed central law affecting the area and boundaries of the respective state

### **6. Constitution (Sixth Amendment) Act, 1956**

This amendment provides a new entry (92A) in the Union List. The amendment empowered the Union Government to levy taxes on all articles of inter-state trade with the exception of purchase and sale of newspapers. The income from these taxes may be distributed among the states by the Union Government.

### **7. Constitution (Seventh Amendment) Act, 1956**

This amendment was passed for reorganisation of states, a detailed account of which has already been given.

### **8. Constitution (Eighth Amendment) Act, 1959**

The Constitution (Eighth Amendment) Act, 1959, amends Article 334 so as to extend the special provision in respect to the reservation of seats for the scheduled castes and scheduled tribes and the representation of the Anglo-Indian Community by nomination in the House of the People and the Legislative Assemblies of States, for a further period of ten years from January 26, 1960.

### **Distribution of Powers in the Indian Constitution.**

Two broad principles are usually followed in the matter of distribution of powers between the central and local governments in a federal system. The Centre may be given certain specified powers and the rest may be left to the units. The U.S.A. and Australia have followed this method of distribution of powers. According to the second principle, the units are given specified powers and the rest is vested in the Centre. Canada and India have adopted the second principle which makes the Centre more powerful than the units. The Indian Constitution which has made an elaborate enumeration of powers contains three legislative lists—(i) the Union List, (ii) the State List and (iii) the Concurrent List. Both the Centre

and the States have exclusive jurisdiction to legislate on matters relating to their own spheres. Again the Union and the States both have the power to legislate matters enumerated in the Concurrent List but in case of conflict between Union Law and State Law, the former will prevail. The Constitution also provides that residuary powers, *ie*, powers not mentioned in any of the three Lists will fall within the jurisdiction of the Centre, thus making Centre far stronger than the States.

### *All-India (Union) List*

The Union List contains as many as 97 subjects, the more important of which are Defence, arms, ammunitions and explosives, Foreign affairs, Currency and Coinage, Banking and Insurance, Customs duties, Diplomatic and Consular relations, relation with the United Nations. Citizenship, Extradition, Standard of Weights and measures, patents and copyrights, mines and oil-fields, inter-state migration, Income-tax and Corporation tax, Census, Posts and Telegraphs, Telephone, Wireless and Broadcasting, Railways and Ports, Airways, foreign trade, historical monuments of national importance, etc.

### *State List*

There are 66 subjects in the State List, such as, maintenance of law and order, administration of justice and jail, Public health, Sanitation, Education, Agriculture, Forests and Fisheries, Trade and Industry within the State, gambling and betting, and revenue, agricultural income-tax, purchase and sale tax, subordinate courts, local government, etc

### *Concurrent List*

This list includes as many as 47 subjects, such as, legal system, economic planning and social security, trade and industry, electricity, printing and newspapers, books, marriage and divorce, trade union and labour welfare, bankruptcy and insolvency, price control, administration of refugee property, adulteration of food-stuff, vagrancy and lunacy, drugs and poisons, etc.

**Distribution of Legislative Powers between the Union and the States.** A federal government implies division of legislative powers between the Centre and the Units. In the U.S.A. type of federations, the central government is an authority

of enumerated powers while the local governments are authorities of both delegated and reserved powers. In the Canadian type of federations, the local governments are authorities of enumerated powers, while the central government is one of both delegated and reserved powers. The division of legislative powers in India resembles the Canadian type not only by its centrepetal tendencies but also by the constitutional provision for three Legislative Lists, namely, Union List, State List and Concurrent List. The Union Parliament will have exclusive powers to make laws in respect to matters enumerated in the Union List and the legislatures of States will be supreme over the State List. So far as the Concurrent List is concerned, both the Union Parliament and the Legislatures of the States will have power to make laws. In case of inconsistency between laws made by Union Parliament and State Legislatures, the Union's law will be valid to the exclusion of state law. Thus ultimate power in the matter of legislation is vested in the Union Parliament. It has also been provided in the constitution that a state or states may voluntarily surrender to the Union Parliament its law-making power on any subject enumerated in the State List. Again Parliament has been empowered to legislate upon any subject in the State List provided such subject has assumed national importance. Besides these, Union Parliament may, at the request of the Council of States or at the request of all the Houses of the Legislatures of two or more states, may make laws in respect to matters relating to the State List. *Lastly*, during the Proclamation of Emergency, Parliament shall have the power to make laws on any of the matters in the State List. As regards other states and territories, the Union Parliament will have full authority to make laws on any subject notwithstanding the fact that such a subject falls within the legislative ambit of the state.

Subject to the special provisions mentioned above, the Union and the States will be supreme in their respective spheres. Any encroachment on the sphere of one by the other will be prevented by the Union Judiciary which will act as the custodian of the constitution.

**Administrative Relations between the Union and the States.**  
Though federal in character, the Government of the Indian

Union shows marked centripetal tendencies. The relation between the Union and the Units, though not one of complete subordination of the latter to the former, is one of excessive dependence of the states on the Union Government which will exercise a sort of paternal control over the states. Articles 256 to 263 deal with the nature and extent of the control to be exercised by the Union over the states in certain cases. It has been laid down in the constitution that the executive power of the states shall be so exercised as to ensure compliance with the laws made by Parliament and the executive power of the State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union. The Union is also vested with the power of giving such directions to a state as the Union considers necessary. The executive power of the Union shall also extend to giving of directions to a state as to the construction and maintenance of means of communication, such as, highways, waterways, railways, declared in the direction to be of national or military importance. The President may, with the consent of the government of a state, entrust to its state officers functions in relation to any matter falling within the ambit of the Union. A law made by Parliament may also confer powers and impose duties upon state officers. Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every state. Parliament may by law provide for adjudication of disputes relating to waters of inter-state rivers or river valleys. The President has been empowered to establish an inter-state Council charged with the duty of enquiring into or making recommendations on inter-state disputes or matters in which some or all states, or the Union and one or more of the states, have a common interest. If a state fail to carry out any directions given under law by the Union government, the President has the power to regard such non-compliance on the part of a state as a failure of the constitutional machinery and as such he may suspend the state constitution.

**Principal Political Parties in India.** Conditions which favour the growth of parties were so long conspicuous by their

absence in India. The system of semi-autocratic government which gives little opportunity to the people in shaping their own political destiny was not congenial to the growth of party system in Indian soils. Again, the system of communal representation as it obtained in India, stood in the way of formation of parties on a sound political basis. The parties that came into existence were mostly communal in their character, organisation and aims and objects. With the gradual growth of national consciousness and the introduction of responsible Government in India, stable parties with definite politics and programmes are expected to come into existence.

**The Indian National Congress.** The Congress is indisputably the best organised and most powerful party in India. The National Congress, it is interesting to note, was founded in 1885 mainly through the efforts and initiative of a British Civil Servant, Allan Octavian Hume by name. For a long time the Congress remained extremely loyal to the British Government. But it became aggressively nationalist after the conclusion of the First World War, when Mahatma Gandhi became the *de facto* leader of the Congress. It would be a profound error to regard the Congress merely as a political party. It is something more than that. It is an organised expression of the hopes and aspirations of the Indian people, the rallying centre of all progressive forces in the vast sub-continent. The Congress includes Moslems and Hindus, big businessmen, industrialists side by side with poor peasants from the remote corners of the country. It claims among its followers agitators from the native states, Anglo-Indians, Native Christians, socialists and reactionaries as well. Anybody who can pay the annual subscription of four annas can become a member. The Congress was pledged to work for the independence of India by all peaceful and legitimate means. It also considers the amelioration of the condition of the masses as one of its principal functions.

At the present moment, the Congress has formed the government at the centre and in all states in the Indian Union with the sole exception of Kerala where a communist-led government was formed but subsequently ousted.



The Congress executive consists of the President and his fourteen associates chosen by him on an All-India basis. This body is known as the Working Committee of the Congress which formulates the policy of the party subject to ratification by the All-India Congress Committee. The A.I.C.C. is chosen by the Provincial Congress Committees consisting of delegates chosen by the primary 'four anna' members. The Central Secretariat of the Congress party is housed in a palatial building at Allahabad. The Late Pandit Motilal Nehru made a gift of the house to the National Congress.

During the thirties of this century, the Left Wing of the Congress began to emerge as a distinct political group inside the Congress. The Left Wing of the Congress was under the able leadership of Sir Subhas Chandra Bose who was re-elected President of the Congress in 1939 against the expressed will of Mahatma Gandhi. The re-election of Mr Bose was a definite test of the Leftist strength in the Congress, the rank and file being with Bose. Bose had subsequently to resign consequent upon the resignation of members of the Working Committee, obviously under the influence of Mahatma Gandhi. Bose formed a separate party known as the Forward Bloc but he remained all through loyal to the Congress and the Mahatma. The difference between the two Wings of the Congress was mainly a difference with regard to the means of attaining the common goal, viz., independence of India.

The Indian National Congress has lived to see its struggle for independence bearing fruit. It has wrested independence from the hands of the British for the four hundred millions of its countrymen but the Congress ideal of unity of India has been impaired by the Congress acceptance of the partitioning of India to solve the Hindu-Muslim problem. Now that the Congress has succeeded, though partially, in achieving its objectives, it has become incumbent on its leadership to justify its existence by re-orientation of its policy and programme.

In the 1951 session of the Congress Prime Minister Nehru was elected President of the Congress, thus combin-

ing in him the headship of both the official and non-official Congress. He is now the accredited leader of the nation held in high esteem by all sections of the community which has given him almost dictatorial powers to lead it. It was owing largely to his towering personality that the Congress party won the 1952 and 1957 elections. His programme, especially the programme of national economic reconstruction as embodied in the two successive Five-year Plans, has been accepted by the nation and his foreign policy has received whole-hearted approval even from his worst critics. In 1955, at Avadi in Madras, a resolution favouring establishment of 'socialist pattern of society' as distinct from socialism was passed. At Jaipur, in 1956-57, the aim has been further clarified as the establishment of socialism. In spite of the desertion of many of his old and able colleagues in the Congress, the party still continues strong and is the biggest political party in India, capable of leading the infant state to its destination. In recent times, the policy and programme of the party have been subjected to a good deal of adverse criticism.

**The Praja Socialist Party.** There was another party group inside the Congress known as the Congress Socialist Party which sought to establish socialism in India. This party severed its connection with the Congress and formed an independent party in 1948. This party after being badly beaten in the election of 1952, decided to merge with the Krishak Majdooi Praja Party under the leadership of Acharya Kripalani. A section of the Forward Bloc, followers of Shri Subhas Bose also merged into the PSP in 1953. The party advocates Gandhian Socialism, the basic principles of which are the abolition of the Zemindari System, development of cottage industries, nationalisation of key industries, etc.

**The Muslim League.** It was the biggest party organisation of the Muslims but it could not claim to be the sole representative of Muslim interest in India. An influential section of the Muslim community remained outside the League organisation. The League acquired considerable strength under the

able leadership of Mr M A Jinnah, a former Congressite who did much for the promotion of Muslim interests in India. The League was wedded to the policy of separate electorate for the minorities and of vivisection of India with a view to forming a separate state of Pakistan for the Muslims. It was alleged that the League Party was encouraged in its demand for Pakistan by a section of the British Conservative Party. The League however succeeded in carving out Pakistan for the Muslims of India. At present, the League has practically gone out of existence in the Indian Union. In Madras only, the party has still some activity and won a few seats in the 1952 election.

**The Hindu Mahasabha Party.** Like its counterpart, the Muslim League, the Hindu Mahasabha was originally a communal organisation of a section of the Hindus who wanted to safeguard the interests of the Hindus against the conflicting interests of the Muslims. The party professed the attainment of independence of India as its ultimate object and it was determined to prevent the vivisection of India into Hindusthan and Pakistan. Though originally planned to be humanitarian and social rather than political in aim the party was revitalised under the able guidance of Mr Savarkar, an old revolutionary and Late Dr S P Mookerjee, a blend of conservatism and liberalism. The characteristic feature of the party was that it was not only anti-Moslem but it was anti-Congress too. Instead of supplementing the activities of the Congress, it wanted to supplant it. The party lost much of its prestige on account of its fighting and uncompromising attitude towards the National Congress at the time of the 1952 election, central and provincial, in which, it was, of course, beaten hollow by the Congress. The Hindu Mahasabha, as a political organisation, has almost gone out of existence, following developments consequent upon the atrocious assassination of Mahatma Gandhi. Its top-ranking leaders felt that the party had outgrown its utility as a political organisation and should therefore divert its activities in the channels of socio-religious reconstruction. Dr Mookerjee made common cause with the Congress Parliamentary party by accepting the

position of a cabinet member in the Nehru Ministry from which he of course resigned on the question of the protection of the interests of East Bengal Hindus. In 1950, the Mahasabha changed its old policy by giving up its communal outlook. Membership of the party was thrown open to Non-Hindus too

**The Communist Party.** The Communist Party of India formed in 1924, consists mostly of educated young men who have been inspired by the ideals of Russian communism. It also includes among its followers a large number of industrial workers. The aim of the party is to organise the government of the country on vigorous Communistic principles. The party was banned on several occasions both by the Government of India and of Pakistan. The party won relatively more seats in the 1957 election and is now the second largest party in the country. Some of the more important items of its programme includes proposals for the abolition of zamindari without compensation, nationalisation of industries, reconstruction of the states on linguistic basis and the rehabilitation of refugees free of cost.

**Bharatiya Jana Sangha.** Of the all-India political parties, the Jana Sangha came into prominence within a comparatively very short period of time. It was the handiwork of the late Dr. S. P. Mookerjee who not only brought it into existence but also raised it to the status of an all-India party within a year of its inception. It had among its followers a sprinkling of non-Hindu members. The party acquired great hold in East Punjab and Delhi and in some districts of West Bengal, it had also a great hold during the lifetime of its founder-President. In ideology, the party has almost the same outlook in social and political matters as the Hindu Mahasabha Party.

Besides these, there is a number of other political parties in the country but none of them counts much, for, none of them can claim to have a sufficient following in the country. Of these parties, mention may be made of the Forward Bloc (Marxist), R S P I, Ram-Rajya Parishad, etc.

The table given below shows the number of votes polled and seats won by the different parties in India in the 1957 election

Total electorate—19 31,29,924  
Total Votes cast—11,23,68,305

Name of Party	No of seats Contested	No of seats Won	Votes Polled
Congress	2,881	1,889	4,76,32,427
Praja Socialist Party	1,102	195	1 13,92 509
Communist Party of India	713	189+13 (Andhra sitting)	98 53,299
Jana Sangha	570	46	43,83,211
Independents and other parties	.. .	582	3,58,59 975

These include 42 and 4 uncontested returns by the Congress and the Independents respectively. A number of seats were not filled in at the time of the general election.

**Local Government.** An Indian state consists of a number of districts and several districts usually form a Division, at the head of which there is a Divisional Commissioner. The district is the most important unit of administration in charge of an officer known as the District Magistrate and Collector who is a member of the former Indian Civil Service or of the IAS under the New Constitution. The district officer is a collector of revenue, the head of the district executive and also a judge in criminal cases. Besides these, he has got numerous other functions which require him to direct, supervise and control all branches of the district administration. The district has been sub-divided into a number of subdivisions at the head of which there is a sub-divisional officer who is in charge of the administration of the area, subject to the control of the district officer. The sub-division comprises a number of Police-Stations which include a number of villages. The officer-in-charge of a Police-station is a Sub-Inspector or an Inspector of Police and is responsible for the maintenance of law and order within his jurisdiction.

For purposes of Local Self-government, there are District Boards in every district and Union Boards in villages and where there is no District Board as in Assam, there are Local Boards in each sub-division. For cities and towns, there are corporations and municipalities. These are elective bodies and look after local needs, such as public health, public safety, public convenience and education, mainly primary.

**Nature of the Indian Federation.** The New Constitution of India, like the Government of India Act, 1935, provides for the creation of a federation known as the Indian Union including both the former provinces and Native States within India after the Partition of 1947. The component Units which form the Union are called states except the tribal areas which have been placed in a different category. A federation comes into existence either by the process of integration of states as in the USA or by the process of disintegration of a big state as in Canada. Although in its general structure, the Indian federation seems to be based on the Canadian model, yet it differs from both the Canadian and USA type in the sense that the Indian federation has been formed by the combined process of integration and disintegration. British India Government was basically unitary in character and the former Part A States were formed out of the old provinces which were transformed into autonomous states by the gradual transfer of powers. But so far as the Native States are concerned which formed Part B and Part C States of the Union, they were not parts of British India. They were brought under the new federal structure under the provisions of the Instrument of Accession which provided for the surrender of sovereignty to the newly-created state of the Indian Union.

*Secondly*, in Canada, USA, and in some other federations, the units composing the federation are of the same kind and enjoy equality or almost equality of status. Thus in the USA, in Canada, and in the USSR, the parts of the federation are designated as states, provinces and union republics respectively and enjoy equality of status. But the Indian federation comprised different categories of units having different status in relation to the Union Government.

Besides, in India, there are certain parts which are under the direct control of the Union Government. In this respect, the Indian federation bore a remote resemblance to the federal government of the U.S.S.R., where, besides the fifteen autonomous republics, a distinctive status has been accorded to a number of sub-units such as autonomous republics, autonomous regions and national areas, all of which have special representation on the Supreme Soviet and enjoy some amount of economic and cultural autonomy.

*Thirdly*, the Indian federation differs from other federations in so far as the distribution of powers is concerned. In sharp contrast to the method of distribution of powers in the U.S.A. or Australia, the Indian constitution has granted specific powers to the states, the residue belongs to the Union. Closely following the Canadian model, the Indian constitution has made a tripartite division of powers into Union List, State List and Concurrent List. In Canada, there are sixteen items on the State List and only two items on the Concurrent List, but in India, the Union List comprises as many as 97 items including all important subjects, the State List comprises 66 while the Concurrent List comprises 47 subjects. Thus it appears that the states in India enjoy far less executive and legislative powers than either the provinces of Canada or the states of Australia. The Central Government of both Canada and India are more powerful than the Central government of Australia. Again in the U.S.A. and Australia, the Central government does not interfere with the constitution of the states which are left free to amend their constitution in their own way. In India as in Canada, the states have no independence either in making or amending their constitutions which have been laid down in the main constitution in all its details. The process of amendment of the state constitutions is identical with that of the constitution of India.

*Fourthly*, the Indian federation has been described as a flexible federation in view of the fact that in times of emergency, it can be transformed into, and worked as, a unitary government. With this end in view, elaborate provision has been made in the constitution. The constitution provides

that in case of a failure of the constitutional machinery of any state, the President may, by proclamation, assume to himself all functions of the state government when the Indian Parliament shall exercise the powers of the State Legislatures. Apart from the residuary powers vested in the Union Parliament, it has been provided in the constitution that Parliament may, at the request of the Council of States, or at the request of the legislatures of two or more states, make laws in respect to matters relating to the State List. Parliament has also been empowered to legislate upon any subject on the State List provided such subject has assumed national importance. Parliament can also legislate for the whole or any part of the country for implementing any treaty, agreement or convention with any other country or countries. The constitution further provides for federal compulsion and for carrying out the directions of the Union Government. These and similar other provisions having no parallel in any other federations go to prove the essentially centripetal bias of the Indian federation in which the component units enjoy a status far inferior to that of the units in the USA, Australia or even in Canada. The centripetal bias may further be illustrated by the constitutional provision for Union Public Service Commission which recruits members for all-Union services but these officers may work under state governments also. Further there is one Election Commission for the whole country and the Comptroller and Auditor-General who is appointed by the President exercises control over state accounts. The subordinate position of the states in the Indian Union may further be illustrated by reference to the system of nomination of Governors by the President and also by the constitutional provision for reservation of bills by the Governor at his discretion for consideration of the President. There is a similar provision in the Canadian constitution and in both the countries, the power has been very seldom exercised. State governments are in various ways dependent on money grants made by the centre.

*Fifthly*, the Indian federation is unique in another respect. The constitution provides for one citizenship, namely, Indian citizenship and unlike in the USA, laws governing the acquisition of Indian citizenship are dealt with by the Union Parlia-



ment Furthermore, the Indian constitution is the least rigid but more reasonably flexible of all the known federal constitutions of the world. Except in certain specified matters, the constitution may be amended by two-thirds majority of the Union Parliament

*Lastly*, the Indian constitution has made provision for one set of courts instead of a dual system as in the U.S.A. Moreover, there is a uniform civil and criminal procedure code administered by one integrated judicial hierarchy with the Supreme Court at the top. The Supreme Court, unlike its counterpart in the U.S.A., acts as the final court of appeal in civil and criminal cases in addition to its function as the interpreter and guardian of the constitution. As we have already seen, the power of the Supreme Court to declare laws invalid is less than that of the Supreme Court of the U.S.A.

Thus on a close analysis, it appears that the Indian federation does not correspond to the classic conception of a federation which implies a perfect federation with autonomous units. The Indian federation is a quasi-federation leaning more towards unitariness than towards federalism. Considering the historical background and the peculiar environment in which the federation was born, it may be suggested that the framers of the constitution perhaps did the right thing in showing their preference for the name 'Indian Union' and taking all steps necessary to preserve the fundamental unity of the state. All federations whether of the perfect or of the imperfect type have an inherent tendency to drift towards unitariness. This is noticeable even in the U.S.A. where the application of the 'Doctrine of Implied Powers' has helped the enlargement of the powers of the national government. The Government of India is essentially of the federal type because the marks,—division of powers, written and rigid constitution and federal judiciary,—by which a federation is distinguished from a unitary government, are all present in it. The only thing that goes against it is that the constitution-makers decided, on the ground of national interests, to make its centre far stronger than the states.

## Indian Constitution—a combination of the Federal and Unitary systems.

A critical examination of the features of the Indian Constitution reveals the fact that though the constitution is federal in form it is unitary in spirit and as such the constitution possesses certain features common to a federal government while its other features prove its essentially centripetal bias. So the constitution is a curious combination of the federal and unitary systems.

### Federal Features.

One of the essential marks of a federal government is the division and distribution of powers. The Indian Constitution has clearly distributed powers between the Union and the States. Secondly, like other federal constitutions, the Indian constitution is written and in general it may be said to be rigid as well. Thirdly, as in other federations, there is in India, a Supreme Court with power to interpret the Constitution and decide disputes arising between the Union and the Units. Fourthly, there is also some amount of special revenue arrangement both for the Union and the States.

### Unitary Features.

That the Indian Constitution is more unitary than federal is evident from the following features too marked to be ignored.

*Firstly*, the Indian Constitution is a complete document which provides not only for the constitution of the Union but also of various states which have no independent power either to enact or amend their own constitution. *Secondly*, the principle of political equality of states is conspicuous by its absence in the Indian federation. States have not been given equality of status. *Thirdly*, the distribution of powers between the Union and the States marks the supremacy of the Union government, the cream of power being vested in it. *Fourthly*, the position of the states has been weakened by the provision of a long concurrent list with the residuary powers vested with the Union. *Fifthly*, the unitary bias of the Indian Constitution has been made more prominent by providing single citizenship, single integrated Judiciary, single Election Com-

mission and All-India Service *Sixthly*, during Proclamation of Emergency, the Federal government may be transformed into and worked as a unitary system *Lastly*, the provision that the boundaries of the different states can be altered by and the appointment of State Governors by the President go to prove its essentially unitary bias

## SUMMARY

British rule in India terminated on and from 15th August, 1947 The New Constitution of India was adopted on the 26th of November, 1949 and came into force from January, 1950

According to the New Constitution, India is a *Union of states* comprising (a) British Indian provinces, (b) provinces under Chief Commissioners and (c) former Native States and the Andaman and the Nicobar Islands

The Indian Constitution has borrowed materials from the constitutions of Great Britain, the U S A , the Dominions, Eire and Burma It has drawn heavily from the Government of India Act, 1935

### *Characteristics of the Constitution*

(1) Though federal in form, the constitution is unitary in spirit inasmuch as the Union government possesses the cream of power

(2) It is elaborately written (3) Though rigid, it is not so rigid as the U S A Constitution.

(4) The form of government is parliamentary

(5) There is one citizenship—Indian citizenship—throughout the country

(6) Constitution is the supreme law of the land and this supremacy is preserved by the Supreme Court

(7) It is a secular state

### *Preamble*

The preamble which walks before the constitution and which has been taken from the U S A constitution gives India the status of a *sovereign democratic republic* It sets forth the highest ideals of liberty, equality and fraternity for all classes of citizens in India

### *Citizenship and Fundamental Rights.*

The Constitution provides for a single citizenship for the whole of India and citizenship in India may be acquired by birth or by residence thus making it quite flexible Fundamental rights of the citizens have been enumerated in the constitution which

has made provision for their preservation by constitutional means. The Rights are —(1) Right to equality, (2) Right to freedom, (3) Right against exploitation, (4) Right to freedom of religion, (5) Cultural and Educational rights, (6) Right to property, (7) Right to constitutional remedies

### *Directive Principles of State Policy*

In addition to the fundamental rights enumerated above, the Constitution provides for a number of directive principles of State policy which, though not enforceable through courts of law, are in the nature of moral codes which no really democratic republic can willingly afford to ignore. These principles have been borrowed from the Constitution of U.S.A. They include provisions for the establishment of a welfare state in India embracing an extensive programme for the social, political and economic development of the country.

### *The Union Executive—The President*

The executive authority of the Union is vested in the President who is to exercise it either himself or by officers subordinate to him. He is elected for a term of five years by an electoral college consisting of the elected members of both the Houses of Parliament and of State Assemblies according to the system of proportional representation by single transferable vote. He must be a citizen of India and be of at least 35 years of age. He may be removed from office by a cumbersome procedure by either House of Parliament by 2/3rd majority votes. A Vice-President is also elected whose normal function is to act as the Chairman of the Council of States and to act during the absence of the President until a new President is elected.

The Constitution has conferred extensive powers on the President. These powers include executive, administrative, legislative, financial and some judicial powers. Besides, he possesses emergency powers. Generally, all these powers are exercised in accordance with the advice of the Council of Ministers.

### *Council of Ministers*

The Union Council of Ministers which aid and advise the President consists of the leaders of the majority party of the legislature, all of whom are formally appointed by the President. The Prime Minister occupies a unique position inasmuch as it is on his recommendation that the President appoints other ministers. He is the Chairman of the Cabinet, leader of the legislature and it is he on whose advice, the extensive powers vested in the President are exercised. The ministers are responsible and accountable to the House of the people.



members of the Assembly are elected directly on the basis of adult franchise

The functions of the state legislatures are almost the same as in the Union Parliament within limits set by the Constitution

#### *Administration of Centrally Administered Areas*

These areas numbering eight are administered by the President through agents appointed by him and Parliament is the sole law-making authority for these areas. Local Councils have been set up in Himachal Pradesh, Manipur and Tripura and a Corporation at Delhi for the conduct of local affairs

#### *Amendment of the Constitution*

The Constitution may be said to be rigid inasmuch as the Indian Parliament cannot amend it in the ordinary process of law-making. Constitutional amendments may be made in the following way

1. Proposal for amendment may be made in either House of Parliament in the form of a bill which must be approved by a majority of total membership of each House and by a majority of not less than two-thirds of each House present and voting. Then with President's assent, it will be valid.

2. In certain special cases as in the matter of Presidential election or in the matter of distribution of legislative powers between the Union and the States, proposals for amendments duly passed by Parliament require ratification by at least half of the legislatures of the States.

3. Amendments relating to certain other matters such as, the formation of new states or re-organisation of existing states may be made by the Union Parliament in the ordinary process of law-making.

#### *Political Parties in India*

During British rule in India, political parties on a sound basis could not develop. The National Congress which came into existence in 1885 was the only political party representing all classes of people in the country and it succeeded in its struggle for winning freedom though it had to give up its ideal of undivided India. The Congress is now the party-in-power which has formed government both at the Centre and in the States. In domestic affairs, the party has adopted a policy of progressive realisation of the ideal of a welfare state. In foreign affairs, it is strictly neutral and is pursuing a policy of peaceful co-existence with other states.

The Communist Party of India is the second biggest party which wants to introduce a communistic society in India based

on the Russian model Besides these, there is a number of other parties, such as, the Praja-Socialist Party, the Hindu Mahashava Party, etc

## QUESTIONS

- 1 Describe the position and powers of the President of India under the present Constitution of India (C U 1951)
- 2 Write a short essay on —The Party system in India (C U 1952;
- 3 Compare and contrast the powers of the President of the U S A , with those of the President of the Indian Union (C U 1953).
- 4 Describe the position, powers and functions of the Governor of an Indian State Should he be elected by the people or nominated by the President? (C U 1954)
- 5 The preamble to the Constitution of India states that India "shall be a Sovereign, Democratic Republic" Explain this (C U 1955)
- 6 Distinguish carefully between the position of the President and that of the Prime Minister of India (C U 1956)
- 7 Describe the position and functions of the Supreme Court in the constitutional system of India (C U 1960).
- 8 Discuss the nature of the present constitution of India. Is it unitary or federal? (C U Hon 1950)
- 9 Describe the position and powers of the Supreme Court of India In what respects, if any, is this Court a guardian of our constitutional rights? (C U Hon 1954)
- 10 Comment, with reference to the position and powers of the Indian President, on the statement that he is the head of the nation but not of the executive and he represents the nation but does not rule it (C U B Com 1957) .
- 11 Compare the procedure of constitutional amendment under the constitution of India with that under the constitution of the United States of America (C U Hon 1957)
- 12 Examine the nature and extent of the control exercised by the Indian Parliament over Union finances (C U B Com. 1958)
- 13 Discuss the constitutional status of the Parliament of India How far is it a sovereign legislative body?
- 14 Discuss the constitutional position of the President of (C U Hon 1958).

## CHAPTER XIV

### GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN

#### *References ·*

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**Introduction.** Pakistan was constituted on August 15, 1947, as a Dominion by the partition of the sub-continent of India in pursuance of an agreed plan between the British Government and the two major political parties of India—the Indian National Congress and the All-India Muslim League. The word *Pak*, according to the Muslim view, means all that is pure and noble in Islam and Pakistan, therefore, refers to the land of the pure. The conception of Pakistan first originated with the poet philosopher Sir Muhammad Iqbal who in the course of his presidential address to the Muslim League in 1930 put forward the suggestion of establishing a separate state comprising the Muslim majority areas of India. But the scheme was not officially taken up by the Muslim League and it remained an ideal for a long time till Quaid-E-Azam Jinnah became the permanent and undisputed President of the Muslim League. The most important landmark in the history of the Indian Muslims is the resolution passed at the Lahore Session of the Muslim League. The resolution officially put forward the claims of the Muslims, demanding the establishment of a separate independent state of Pakistan comprising the Muslim majority areas in the north-western and eastern zones of India. In the meantime various attempts were made and negotiations were initiated to bring about *rapprochement* between the National Congress and the Muslim League but the great Muslim leader would not budge an inch. The “Quit India” movement started by Mahatma Gandhi in 1942 was immediately followed by a slogan “divide and quit” raised by the Muslim League. The last effort to



preserve Indian unity was made by the British Cabinet Mission which put forward a novel scheme of an All-India federation, reconciling Muslim demand for Pakistan with the unity of India. The League agreed but the Congress rejected the grouping of the provinces unless the provinces were given the right to opt out of a group. This was not acceptable to the League and the result was a deadlock and having failed to bring about a compromise between the two parties, the British Government at last decided to divide the country. The Congress which had all along opposed the scheme of partition of the country had no other alternative but to accept it subject to the condition that the Hindu-majority areas in Bengal and the Punjab should be allowed to be separated and united with India. Thus the Dominion of Pakistan was constituted on August 15, 1947, under the provisions of the Indian Independence Act, 1947, which received the royal assent on 18th July, 1947.

The total area of the new Dominion is 361,218 square miles with a population of 7,10,96,600 of which 72.7% are Muslims. Pakistan is the fifth biggest state in the world and the biggest among the Muslim states. It comprises two distinct geographical areas—the Eastern Pakistan and Western Pakistan separated from each other by over a thousand miles. The Eastern zone comprises East Bengal coupled with the Sylhet District of Assam and the Western zone consists of Sind, North-West Frontier Province, West Punjab, Beluchistan and also states like Bhawalpur and Kalat which have acceded to the Dominion. The capital of the new state is Karachi.

The Pakistan Constituent Assembly which came into existence simultaneously with the Constituent Assembly of the Indian Union has succeeded after eight years' hard labour in framing a Constitution for Pakistan. The Constitution comprises 13 Parts covering 245 Sections and 5 Schedules.

At the end of 1954, the Government of Pakistan decided to integrate the existing Provinces and Princely states of West Pakistan into a single province and to make the country a federation of two units, West Pakistan and East Pakistan. West Pakistan came into existence on October 14, 1955.

### **Fundamental Rights.**

It is provided under Fundamental Rights that all citizens shall be equal in the eye of law and no person shall be deprived of life or liberty save in accordance with law. The citizens' right to freedom of speech and expression and the right to assemble, peacefully and without arms, and the right to form associations have been guaranteed. Citizens joining any educational institution will not be required to receive any religious instruction or attend religious ceremony or worship which is other than his own. No citizen shall be denied admission to any educational institution receiving aid from public revenues on ground only of race, religion, caste, sex or place of birth.

Untouchability is abolished and its practice in any form is forbidden and shall be regarded as a punishable offence. Citizens qualified for appointment to Public Service shall not be discriminated against on the ground of race, religion, caste, sex, residence or place of birth. The right is guaranteed to move the Supreme Court by appropriate proceedings for the enforcement of Fundamental Rights.

### **Directive Principles.**

Closely following the Indian Constitution, the Pakistan Constitution embodies Directive Principles of State Policy which provides that the state shall take steps to enable the Muslims of Pakistan to order their lives in accordance with the Holy Quran and the Sunnah and make the teachings of the Quran to them compulsory.

The state shall discourage parochial, racial, tribal, sectarian and provincial prejudices among the citizens and it shall protect all the legitimate rights and interests of non-Muslim communities of Pakistan.

It is further provided that the state shall endeavour to promote the economic well-being of its citizens irrespective of caste, creed or race by preventing the concentration of wealth in the hands of a few, by providing basic necessities of life, by providing for work and adequate livelihood and by reducing disparity in the emoluments of persons in the various classes of service of Pakistan as far as possible.

The Directives provide *inter alia* that the state shall endeavour to strengthen bonds of unity among the Muslim countries and promote international peace and security by fostering goodwill and friendly relations among all nations

It also includes a provision for the separation of the Judiciary from the Executive

### **The Federal Executive—the President.**

The head of the state will be a President who shall be elected by the members of Federal National Assembly and the Provincial Assemblies in accordance with the system of proportional representation by means of a single transferable vote. None but a Muslim shall be eligible for election as President who shall not be less than forty years of age. The President will hold office for five years and will be re-eligible only for a second term. He will be vested with the supreme command of the armed forces.

The Cabinet, which will be headed by a Prime Minister, shall be collectively responsible to the National Assembly. The President shall appoint from among the members of the National Assembly a Prime Minister, who, in his opinion, is able to command the confidence of the majority of members of the National Assembly. Other Ministers shall be appointed by the President on the advice of the Prime Minister.

### **The Legislature.**

The Legislature of Pakistan which shall be known as National Assembly, shall consist of 310 members, one-half of whom shall be from East Pakistan and the other from West Pakistan. For a period of ten years, ten additional seats—5 from East Pakistan and 5 from West Pakistan—shall be provided in the National Assembly for women. As often as a Prime Minister is appointed, the National Assembly shall be summoned within three months of the appointment. Unless dissolved sooner, the National Assembly shall stand dissolved on the expiration of five years. There is a provision to the effect that one session of the National Assembly shall be held in Dacca unless otherwise decided by it.

When a Bill has been passed by the National Assembly, it shall be presented to the President who shall give his assent to or withhold his assent therefrom or he may return a Bill other than a Money Bill with a request to the Assembly for its reconsideration. But if the Bill is passed again with or without amendment by a majority of the total number of members of the Assembly, the President shall not withhold his assent therefrom.

### **Provincial Administration.**

There shall be a Governor in each of the Provinces. The Governor shall be appointed by the President and he shall hold office during President's pleasure and will be ineligible for membership either of the federal or provincial legislature. There shall be a provincial cabinet consisting of Ministers headed by a Chief Minister and the Governor shall be aided and advised in the discharge of his duties by the Ministers.

Provincial legislatures shall consist of 300 members each. For a period of 10 years, 10 additional seats will be created in each assembly for women.

### **Relations between the Federation and the Provinces.**

It provides for a *Federal, Concurrent and Provincial List* of subjects, as given in the fifth schedule. The Federal National Assembly has the exclusive power to make laws in respect to any of the matters enumerated in the Federal List. Both the Federal National Assembly and the Provincial Legislatures will share power in making laws in respect to subjects in the Concurrent List. The Provincial Legislature shall have exclusive power to make laws for Province or any part thereof, with respect to subjects enumerated in the Provincial List. It shall be the duty of the Federal Government to protect every province against external aggression and internal disturbances and to ensure that the Government of every Province is carried on in accordance with the provisions of the Constitution.

Railways have been placed in the Provincial List of subjects and the National Assembly has been given the authority to transfer Railways in East Pakistan to the East Pakistan

Railway Authority and Railways in West Pakistan to the West Pakistan Railway Authority.

Broadcasting is in the Federal List of subjects but Provincial Governments shall be competent to construct and use transmitters for broadcasting in the Province

### **Elections.**

There is provision for an Election Commission headed by a Chief Election Commissioner to be appointed by the President. The Election Commission will be responsible for everything in connection with elections to the National Assembly and Provincial legislatures.

Any citizen of Pakistan who is not less than 21 years of age and who has not been declared by a competent court to be of unsound mind shall be entitled to vote, provided he has been resident in the constituency for a period of six months and provided he is not otherwise disqualified. After the dissolution of a legislature, Federal or Provincial, new election must occur not later than six months from the date of such dissolution. Casual vacancies will have to be filled by by-election within three months from the date when such vacancies occur.

### **Judiciary.**

A Judge of the Supreme Court shall not be removed from office except by an order of the President passed after an address by the National Assembly, supported by a majority of the total number of members of the Assembly, and by a majority of not less than two-thirds of the members present and voting, has been presented to the President for the removal of the Judge on the ground of misbehaviour or infirmity of mind or body.

The Supreme Court will have original jurisdiction, to the exclusion of other courts, in inter-provincial disputes or disputes between one or more provinces and the Federal Government or between the Federal Government and the Government of a Province on the one side and the Government of the other Province on the other side

A Judge of the Supreme Court shall not be eligible for appointment as Governor of a Province, temporarily or permanently.

High Courts shall have the power to issue writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*

### **Public Service Commission.**

It provides for conditions of service of persons in Pakistan, their tenure of office, recruitment and conditions of service, and the appointment of Public Service Commission for the Federation and Provinces. The duty of the Federal Public Service Commission shall be to present annually to the President and of the Provincial Public Service Commission to the Governor a report of the work done by the Commission

### **Emergency Provisions.**

It relates to Emergencies, including Proclamation of Emergency on account of war or internal disturbances and the proclamation of assumption of power by the Federation in case of the failure of the constitutional machinery in the Provinces.

In case such an emergency occurs, the President may assume to himself or direct the Governor of the Province to assume on his behalf all or any of the functions of Government and he may declare that the powers of the Provincial legislature shall be exercised by or under the authority of National Assembly.

Such a proclamation shall be laid before the National Assembly and shall cease to operate at the expiration of two months, unless before the expiration of that period, it has been approved by a resolution of that National Assembly which can extend the period not exceeding four months but in no case shall such proclamation remain in force for more than six months.

### **Islamic Provisions.**

The Republic shall be called "The Islamic Republic of Pakistan" Steps shall be taken to enable the Muslims to order their lives in accordance with the Quran and the Sunnah. No law shall be enacted which is repugnant to the injunc-

rions of Islam as laid down in the Quran and the Sunnah. Nothing shall affect the personal laws of the non-Muslims or the status of the non-Muslims as citizens of Pakistan or any other provisions of the Constitution

The President shall constitute a National Economic Council of eight members with the Prime Minister as *ex-officio* Chairman. It shall be the duty of the Council to review the overall economic position of the country and to formulate plans in respect of financial, commercial and economic policies and to ensure that uniform standards are attained in the economic development of all parts of the country

**Part XIII** deals with Temporary and Transitional Provisions.

The official languages of the Islamic Republic of Pakistan shall be Urdu and Bengali

For a period of 20 years from the Constitution Day English shall continue to be used for all official purposes but on the expiration of 10 years, the President shall appoint a Commission to make recommendations for the replacement of English. But any Provincial Government is entitled to replace English by any other official language before the expiration of 20 years

### **Pakistan Constitution—A General Survey.**

Pakistan is a federal republic comprising of at present two administrative units, viz., West Pakistan and East Pakistan. One of the essential conditions necessary for the successful working of a federal form of Government is geographical contiguity but unfortunately, the two wings of the newly-created state is separated by thousand miles of Indian territory making it impossible for free contacts between the two parts. The absence of this contiguity is a hindrance to the growth of a common sense of nationhood which is the very foundation of a federation. Distance creates callousness and prevents people from taking active interests in common affairs. The differences which already exist between the two parts are being aggravated by this lack of geographical contiguity

True it is that the constitution provides for equal rights for all classes of citizens, but the most significant fact is that it is not a secular state but an Islamic state where none but

a Muslim can be the President. Such a provision in the constitution has given rise to misgivings and a sense of insecurity in the minds of the non-Muslim citizens of the state.

Politics in Pakistan is in a fluid condition. The Government has not yet been able to secure stability which is necessary for peace and progress. So many governments succeeded quickly at one another's heel interspersed by President's rule in both the wings that it was not possible for any government to adopt a long-term policy for national reconstruction.

Stabilization of internal politics and creation of friendly relation with the neighbouring states are most necessary now and when these will be achieved, Pakistan will emerge out as one of the leading states of Asia.

### **Recent Developments in Pakistan.**

There have been momentous political changes of a far-reaching character in Pakistan since August, 1955. Major-General Iskander Mirza became the Provisional President in March, 1956. On Oct. 7, 1958, President Mirza promulgated martial law in Pakistan, suspended the central and provincial governments, suppressed all political parties and abrogated the constitution. General Muhammad Ayub Khan, the Commander-in-Chief of the Pakistan Army, was placed in charge of martial law administration.

In October of the same year, President Mirza resigned and General Muhammad Ayub Khan stepped into his shoes assuming to himself the office of the President and the Prime Minister combined. His authority was confirmed by a ballot in February, 1960 and the military title of Field-Marshal was conferred upon him. Pakistan is now virtually under military dictatorship. The Field-Marshal conducts the administration of the country with the aid of his Presidential cabinet consisting of 12 members, reconstructed in February, 1960.

### **SUMMARY**

Pakistan came into being simultaneously with the Indian Union on August 15, 1947. It was a Dominion till March 22, 1956, but on March 23, 1956, Pakistan was proclaimed an Islamic Republic and still continues to be a full member of the Commonwealth of Nations.



The constitution was adopted on 29th February, 1956. It comprises 13 parts. First part deals with the territories of Pakistan which include at present two units—East and West Pakistan.

The constitution provides for fundamental rights of citizens, such as, freedom of speech and expression and the right to assemble and to form associations. Untouchability has been abolished.

Besides fundamental rights, the constitution embodies a number of directive principles which enjoin upon the state the duty of helping the citizens to regulate their lives according to the Holy Quran and the Sunnah. Discrimination against the Non-Muslims is also forbidden.

The constitution provides for a Muslim President as the head of the state who will be aided and advised by a Council of Ministers headed by a Prime Minister, both the Premier and other Ministers being required by the constitution to be members of the federal legislature to which they will be responsible. The President has been given powers of emergency legislation.

The federal legislature is a unicameral one consisting of 310 members directly elected on a basis of parity between the two Units.

There is a Supreme Court which acts as the custodian of the constitution.

In each of the two Units of Pakistan, there is a responsible government consisting of a Governor, appointed by the President, a Council of Ministers to aid and advise the Governor, a unicameral legislature and a High Court.

Pakistan is now virtually under a military dictatorship.

### QUESTIONS

1. Discuss the characteristics of the Pakistan constitution.
  2. How far do the conditions necessary to the formation of a federal union exist in Pakistan?
  4. What are the Fundamental Rights of the citizens of Pakistan? Are they absolute?
  4. Discuss the position and powers of the President of the Islamic Republic of Pakistan.
  5. Discuss the position of the Council of Ministers in relation to (a) the President and (b) the legislature.
  6. Discuss the extent of autonomy enjoyed by the Units of Pakistan.
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# CHAPTER XV

## GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

### *References*

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### **Introduction.**

The Chinese people are as old as the rocks and they have a civilization which is hoary with age. But they had to live for long years under the dark rule of imperialism, feudalism and lastly under foreign capitalism which practically destroyed their status as an independent state and reduced them virtually to the position of serfs. When the sufferings of the people reached its peak, they waged an uncompromising struggle against domestic feudalism and foreign capitalism. In 1911, they succeeded in overthrowing the age-old monarchy of Manchu Dynasty and the great Republic of China was born on February 12, 1912 under the leadership of Dr Sun Yat Sen, who consolidated the whole of the country under one central administration. Dr Sun Yat Sen was the founder of the Kuomintang (K.M.T) and after his death in 1925, leadership of the party passed on to the hands of Generalissimo Chiang-Kai-Shek.

But in the meantime, another factor of utmost importance contributed to the remaking of Chinese history on a new basis. Inspired by the ideals of Russian Communism, advanced elements of the Chinese people accepted Russian Communism, with the belief that it was Russian model of socialism rather than Anglo-American capitalism, which could solve the Chinese problem. The idea of the intelligentsia steadily filtered through to the masses and in 1921, the Chinese Communist Party was formed. Dr Sun Yat Sen during the five years preceding his death made common cause with the communists in Russia and practically accepted the communistic programme for the regeneration of his country.

Generalissimo Chiang, the leader of the Kuomintang and President of the Republic, had already renounced Sun Yat Sen's policy and betrayed the revolution obviously under the influence of the British and the U.S.A. Governments. When Chiang-Kai-Shek joined hands with the Anglo-American Governments which substantially helped him with sinews of war, the responsibility for leading the Chinese revolution was taken up by the Chinese Communist Party which, backed by Russia, had continued skirmishes with the K.M.T. government. The invasion of China by Japan led to the temporary suspension of hostilities between the Kuomintang authority and the Communists, the latter offering to help the K.M.T. in driving away the Japanese. This undeclared war between China and Japan continued during the whole course of the Second World War in which China fought as a trusted ally of Allied powers against the Axis Partners. Co-operation with Allied powers secured for China a permanent seat on the Security Council of the United Nations which came into existence after the cessation of hostilities.

The truce that was made between the Communists and the Kuomintang was shortlived and armed conflict between the two ensued shortly after the conclusion of the Second World War as K.M.T. was the more aggressive and uncompromising in its attitude towards communist demand. Civil war was now in full swing and in course of 1949, the Communists succeeded in driving away K.M.T. from the mainland of China. During 1950, the Communists not only obtained full control over the mainland but also extended its hold over most of the islands off the coast. Chiang's government was forced to retire to Taiwan (Formosa) where it still continues as a satellite state of the U.S.A.

On September 21, 1949, the 'People's Republic of China' was proclaimed in Peking by the Chinese People's Political Consultative Conference which elected Mao Tse-Tung as Chairman of the Central People's Government and passed a common programme of sixty articles. The Draft Constitution of the People's Republic was delivered at the First Session of the First National People's Congress on September 15, 1954 and it was adopted on September 20, of the same year.

The Constitution of the People's Republic of China is a very brief one consisting of a preamble and four chapters which include 106 articles in all

### **General Principles of the Constitution.**

Chapter I covering articles one to twenty deals with the general principles which state that the People's Republic of China is a People's democratic state led by the working class and based on an alliance of the workers and the peasants. It has been expressly stated in the constitution that all power in the Republic belongs to the people as represented by the National People's Congress and the Local People's Congresses. The constitution further states that the Republic is a centralised multi-national state in which all nationalities enjoy equal rights in the matter of preservation and promotion of their language, habits and customs. The constitution also guarantees regional autonomy to areas compactly inhabited by regional minorities. The new Republic proposes to abolish gradually the system of exploitation and to build up a socialist society with the help of the organs of the state and social forces.

The state recognises for the present the following forms of ownership of the means of production which comprises (i) state ownership, i.e., ownership by the whole people, (ii) co-operative ownership, i.e., collective ownership by the working people, (iii) ownership by the individual working people, and (iv) capitalist ownership. The state sector of the economy is a socialist sector, owned by the people and it is the leading force in the national economy and the material basis on which the state carries out socialist transformation. This sector enjoys priority of its development over other sectors. The state protects the rights of peasants to own land and other means of production according to law and guides and encourages them to increase production by organising producers' supply and marketing and credit co-operatives voluntarily. The state also protects, guides and helps handicraftsmen and other non-agricultural individual working people to own means of production and to improve their enterprise in various ways. The policy of the state towards rich peasant-economy is, however, to restrict and gradually eliminate it.

The policy of the state towards capitalist industry and commerce is to use, restrict and transform them in a way as to make them beneficial to national welfare. The state gradually replaces capitalist ownership by ownership by the people.

The state encourages all able-bodied citizens to work which is a matter of honour to every citizen. The constitution lays down that public officials in the discharge of their duties should be guided by a spirit of service to the people and they are directed to rely on the masses of the people and to maintain constant contact with them.

The state deprives the feudal landlords and bureaucrat-capitalists of political rights for a specified period of time according to law, at the same time it provides them with a way to earn a living, in order to enable them to reform through work and become self-supporting citizens. The state protects the people's democratic system by suppressing and punishing all treasonable and counter-revolutionary activities. The duty of the armed forces of the Republic is to protect the democratic rights of the people by defending the security and sovereignty of the country.

### **Fundamental Rights.**

Like all other modern constitutions, the new Constitution of the People's Republic of China seeks to guarantee the social, economic and political rights of the citizens of the People's Republic. The inclusion of fundamental rights in the constitution was intended to protect national minorities and also to protect the individual against arbitrary action and discriminatory treatment by the government. Articles 85 to 99 deal with these fundamental rights which are:

#### **1 Right to Equality.**

All citizens are equal before the law and are entitled to vote and stand for election provided they have attained the age of 18 and otherwise not disqualified, irrespective of their nationality, race, sex, occupation, social origin, religious belief, education, property status, or length of residence. Thus women enjoy equal rights with men in the matter of voting and seeking election to any office in the state. The state

further guarantees equal rights to women in the spheres of economic, cultural, social and domestic life. The state protects marriage, the family, and the mother and the child.

### **1. Right to Personal Freedom.**

This includes freedom of the person of the citizens as well as their freedom of speech, freedom of assembly, freedom of the Press and freedom of procession and demonstration. No citizen may be arrested except by decision of a people's court or with the sanction of a people's procuratorate. The state also protects the proper rights and interests of Chinese residents abroad.

### **2. Right to Freedom of Religion.**

Citizens of the People's Republic of China enjoy freedom of religious belief.

### **3. Right to Inviolability of Homes.**

The homes of the citizens are inviolable and privacy of correspondence is protected by law.

### **4. Right to Work.**

Citizens of the Republic have the right to work and to guarantee enjoyment of this right, the state, by planned development of the national economy, gradually creates more employment, and better working conditions and wages.

### **5. Right to Rest and Leisure.**

Working people have the right to rest and leisure. To guarantee enjoyment of this right, the state prescribes working hours and holidays for workers and office employees and at the same time it gradually expands material facilities to rest and build up their health. In old age or in case of illness or disability, the working people have the right to material assistance which is provided for by social insurance, public health services, etc.

### **6. Right to Education.**

Citizens have a right to education which is guaranteed by the establishment and extension by the state of the various types of educational and cultural institutions. Physical and

mental development of the young people receive special attention. The state also encourages scientific research, literary and artistic creation and other cultural pursuits.

### **8 Right against the Government.**

Citizens have the right to bring complaints against any government officer for transgression of law or neglect of duty. People suffering loss due to the infringement of their rights by any government officer have the right to compensation.

### **9 Right of Asylum.**

The state grants the right of asylum to any foreign national persecuted for supporting a just cause, for taking part in the peace movement or for engaging in scientific activity.

### **Fundamental Duties.**

Closely following the Soviet constitution, the constitution of the People's Republic of China imposes upon the citizens a number of duties.

- 1 Every citizen is required to abide by the law and the constitution, to maintain labour discipline and to keep order and respect social duties.

- 2 It is the sacred duty of every citizen to protect and fortify public property.

- 3 It is the duty of citizens to pay taxes according to law.

- 4 Military service in the defence of the fatherland is an honourable and sacred duty of every citizen who is to perform military service according to law.

### **The State Structure.**

Chapter two of the Constitution which comprises six sections covering 65 Articles deals with the state structure.

#### **The Executive—The Chairman of the People's Republic of China.**

The head of the state is the Chairman of the People's Republic of China who is elected for a term of four years by the National People's Council. He must be at least 35 years of age and any citizen who has the right to vote and stand for election is eligible for election as the Chairman.

## **Powers and Functions of the Chairman.**

As the executive head of the state, the Chairman promulgates laws and decrees, appoints or removes Premiers, Vice-Premiers, Ministers, Heads of Commissions and the Secretary-General of the State Council. He can appoint and dismiss the Vice-Chairman and other members of the Council of the National Defence, confer state orders, medals and titles of honour, proclaim general amnesties and grant pardons, proclaim martial law, proclaim a state of war and order mobilization. All the above powers he exercises in pursuance of decisions of the National People's Congress or the Standing Committee of the Congress.

The Chairman represents the Republic in its relation to other states, receives foreign ambassadors and in pursuance of the decisions of the Standing Committee of the National People's Congress, appoints or recalls plenipotentiary representatives to foreign states and ratifies treaties with foreign states. He is the Chairman of the Council of National Defence and has the command of the armed forces of the country. He can at any time convene a Supreme Conference and act as its Chairman. He is to submit the views of the Supreme State Conference on important affairs of state to the National People's Congress, its Standing Committee, the State Council or other bodies concerned for their consideration and decision.

In case of death, resignation or incapacitation of the Chairman, the functions of the Chairman shall be performed by the Vice-Chairman whose election and term of office are the same as those of the Chairman.

## **The State Council.**

The State Council of the People's Republic of China, that is, the Central People's Government, is the executive organ of the highest state authority, it is the highest administrative organ of the state. It consists of a Premier, 10 Vice-Premiers, 29 other Ministers or Chairmen of Commissions having ministerial status and a Secretary-General. The Premier of the State Council is elected by the National People's Congress on the recommendation of the Chairman of the People's Re-



public, and other component members of the State Council are elected on the recommendation of the Premier.

The Premier directs the work of the State Council and presides over its meetings. The Vice-Premiers assist the Premier in his work. Each minister is in charge of a department and may issue orders or directives within the jurisdiction of his own department and in accordance with law.

The State Council is responsible to the National People's Congress and reports to it, or, when the Congress is not in session, to its Standing Committee.

### **Functions of the State Council.**

The State Council exercises a variety of functions. It formulates administrative measures, issues decisions and orders and verifies their execution in accordance with the constitution, laws and decrees. It submits bills to the Congress or its Standing Committee. It also co-ordinates and leads the work of Ministries and Commissions especially the work of local administrative organs throughout the state. The State Council puts into effect the national economic plans and provisions of state budget, controls domestic and foreign trade and directs cultural, educational and public health work. It directs the conduct of external affairs and protects the interests of Chinese abroad. It has also the power to revise or annul inappropriate decisions and orders issued by Ministers or by local administrative organs of state.

In addition to these, the State Council may exercise such other functions and powers as are vested in it by the National People's Congress or its Standing Committee.

### **The Legislature—The National People's Congress.**

The National People's Congress is the only legislative authority in the country and is the highest organ of state authority in the People's Republic of China. The Congress is composed of deputies elected by provinces, autonomous regions, municipalities directly under central authority, the armed forces and Chinese residents abroad. Provinces elect one Deputy for every 8,00,000, persons but at least 3 deputies must be elected from each province. Cities elect one deputy for every 1,00,000 persons, national minorities elect 150

deputies, armed forces 60 and overseas Chinese elect 30 deputies. The deputies are elected for a term of 4 years. They cannot be arrested or placed on trial without the consent of the Congress or during its recess, of its Standing Committee. The position of the deputies is peculiar in the sense that they are subject to the supervision of the units which elect them and are subject to removal from office by their electoral units. They have the right to ask question to any Minister who is under obligation to answer it.

The Congress meets once a year, convened by its Standing Committee. It may also be summoned for extra sessions by the Standing Committee or may be convened if one-fifth of the deputies so propose.

### **Functions of the National People's Congress.**

The Congress is a uni-cameral legislature with extensive powers over legislation, finance and over the executive.

1. It is the sole authority to enact laws which require a simple majority vote of all the deputies of the Congress. It examines and approves the state budget and financial report.

2. It has the power to amend the Constitution which requires a two-thirds majority of vote of all the deputies of the Congress. It also supervises the enforcement of the Constitution.

3. Its power to appoint and dismiss high officers of the state is also very extensive. It elects the Chairman, Vice-Chairman, President of the Supreme People's Court and the Supreme Procurator of the People's Republic. It also decides on the choice of the Premier of the State Council upon recommendation by the Chairman, Component members of the State Council and also the Vice-Chairman and other members of the State Council and also the Vice-Chairman and other members of the Council of National Defence upon recommendation by the Chairman of the Republic. It has also the power to remove all the above officers of the state.

4. It decides on questions of war and peace and also general amnesties. It decides on national economic plans and ratifies the status and boundaries of all categories of units under central authority.

## **The Standing Committee of the National People's Congress.**

It is a body which closely resembles the Presidium of the Supreme Soviet of the U.S.S.R. As the Presidium of the Supreme Soviet is, so also is the Standing Committee a permanently acting body of the National People's Congress and through this body, the Chinese Revolutionary leaders control all the state organs.

The Standing Committee consists of the following members elected by National People's Congress the Chairman, 13 Vice-Chairmen, the Secretary-General and 65 other members

The Standing Committee of the National People's Congress exercises all the powers and functions which are exercised by the National People's Congress and in the exercise of its powers, it is responsible to the National People's Congress and reports to it. Members of the Committee may be recalled by the National People's Congress. It has the special power to interpret the laws and adopt decrees

## **Judicial Organisation.**

The highest judicial authority in the Republic is vested in the Supreme People's Court consisting of a President and a number of judges. The President is elected by the National People's Congress for a term of four years. The Supreme People's Court is responsible to the National People's Congress and reports to it; or, when it is not in session, to its Standing Committee. Besides the Supreme Court, there are local people's courts and special people's courts. In the administration of justice, people's assessors play an important part

There is also a People's Procurator-General who is assisted by local procurators. The duty of the Procurator is to see that laws are strictly observed by all government institutions and government officials

## **Local Administration.**

The People's Republic of China is a multi-national state divided for administrative purposes into 25 provinces, two

autonomous regions of Inner Mongolia and Tibet and three municipalities, viz., Peking, Tientsin and Shanghai.

Provinces and autonomous regions are divided into autonomous *chou*, counties, autonomous counties and municipalities

Counties and autonomous counties are divided into *hsiang*, nationality *hsiang* and towns. On each level, there are People's Congresses and Councils

### **Political Party.**

The Chinese Communist Party is virtually the single political party which determines the policy of the state. The party commands a following of over six million active members, besides a large number of sympathisers. But the government may be said to be a multi-party government as it includes representatives of other political parties. In this respect, the Chinese Communists are not so ruthless as the Communists in the U S S R. Even capitalists who are genuine patriots and stand for the prosperity of China are allowed to exist and work for the good of the state.

## **SUMMARY**

On Sept 21, 1949, the People's Republic of China was proclaimed in Peking

The constitution of the new republic is a brief one, the distinguishing feature of which is that the state recognises state ownership, collective ownership, private ownership and capitalists ownership simultaneously. The state extends protection to all who aid production. But all treasonable and counter-revolutionary activities are suppressed ruthlessly.

The constitution guarantees the social, economic, and political rights of the citizens. Some of the important rights are Right to equality, of personal freedom, of religion, right to work, right to rest and leisure, right against government.

The constitution also provides for the fundamental duties of citizens, such as, obedience to laws, protection of public property, payment of taxes, etc.

The executive authority of the state is vested in a Chairman who is elected for four years by the National People's Congress. There is a State Council headed by a Premier which is the executive organ of the highest state authority. The State Council is responsible to the National People's Congress which is the

supreme legislature of the Republic. Closely resembling the Presidium of the U S S R, there is a Standing Committee of the National People's Congress. It is this body through which the revolutionary leaders control all the state organs. The highest judicial authority is vested in the Supreme People's Court.

## QUESTIONS

1. Discuss the structure of the Government of the People's Republic of China.

2. Is the Government of the People's Republic of China an exact copy of the Government of the U S S R? Give reasons for your answer.

3. Enumerate some of the more important fundamental rights guaranteed by the Constitution of the People's Republic of China.

4. Discuss the position and powers of the Chairman of the People's Republic of China. What is his relation with the Premier?

5. Discuss the position and powers of the Standing Committee of the National People's Congress.

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## CHAPTER XVI

### GOVERNMENT OF JAPAN

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D. N. Rowe—The New Japanese Constitution.

**Introduction.** Next to ancient India and Persia, the land which succeeded in attracting the awe and admiration of the Western Countries is a group of islands in the Pacific which foreigners call Japan. Japan occupied a pre-eminent position in international politics from the beginning of the twentieth century. She came to be looked upon as a formidable rival of the Western powers, especially of Great Britain and the USA when Japan dealt a crushing blow to the powerful Czar of Russia in the Russo-Japanese war of 1904-5. In the war with Russia, Japan not only gave proof of her superior military power but within a very short space of time, she came to be recognised as a leading nation in civilization and culture as well as in trade and commerce. While other Asiatic countries were wholly or partially in a state of foreign domination, Japan kept her banner flying as an independent state and obtained respectful recognition of her independent status from the Western powers. Other Asiatic countries which lost their freedom looked upon Japan as the very symbol of Asiatic freedom and Japan came to be regarded as the never-failing source of inspiration to the down-trodden peoples of Asia. So the study of the constitutional history and the administrative system of Japan is imperative on the part of Asiatic students.

#### **Evolution of the Japanese Constitution**

##### **First Period (Absolute Monarchy)**

According to the Japanese tradition, the empire is as old as the rocks being founded by Emperor Jimmu Tenno in

660 B.C. and since then the descendants of Emperor Jimmu have been reigning in Japan with unbroken continuity. *Shintoism*—a body of beliefs and rituals—is the religion of the land which taught them the virtues of honesty, liberality and above all self-abnegation in the battlefield. It further inculcated a doctrine of Emperor-worship, the emperor being descended from sun-goddess and as such possessing a quality of divinity. This belief in the divine origin of the Emperor made Japanese people extremely loyal to the emperor who ruled the country both as a patriarch and a Vicegerent of God up to the end of the twelfth century.

### Second Period (Rise of the Shogan)

The second period of the political history of Japan begins with the rise of the Shogans. One of the earlier emperors unwittingly set up a rival authority by conferring the title of Shogan on a member of the Minamoto family. The word Shogan is a military title meaning the chief military head. The result of this short-sighted policy on the part of the emperor was that from 1192 until 1867 the emperors had little but ceremonial functions, while successive families of Shogan exercised the temporal power. The Shogunate in course of time gave rise to a system of feudalism which through a long process divided the whole country into great fiefs held by *daimios* or feudal lords who owed allegiance actually to the Shogan and only nominally to the emperor who, by this time, was bereft of all powers. These feudal lords had their vassals and sub-vassals thus reducing the country to innumerable small fiefs and making administration highly decentralised and consequently very weak. Excepting the few wealthy feudal chiefs, the mass of inhabitants was reduced to the position of serfs analogous to the feudal system which prevailed in mediaeval Europe.

### Third Period (Period of Restoration and Westernisation)

The year 1867 is a landmark in the constitutional history of Japan because in that year the Shogunate was abolished and the emperor was restored to his original power and prestige. In 1867 the emperor Meiji recovered the imperial power after

the abdication of the last Shogan Keiki. This was followed by a rapid westernisation undertaken by the new government.

To comprehend fully the process of rapid modernisation of Japan, it is necessary to probe a little into Japanese social and political history during the period from 1192 to 1878

The feudal system in Japan consequent upon the establishment of the Shogunate destroyed the unity and solidarity of the country by dividing it into a number of small fiefs each under a vassal or a sub-vassal, held nominally of the Emperor but actually of the Shogun. But the people of Japan did not accept the feudal system which removed them far from their emperor whom they revered not only as the great Patriarch but also as the descendant of the Sun-Goddess possessing a divinity which makes it obligatory on the part of the subjects to obey him. Thus the mass of inhabitants wanted restoration of the Emperor to his former power and prestige.

Secondly, the absence of a strong central authority resulted in frequent rivalry and bickerings among the feudal chiefs, the weaker among them being unable to compete successfully with the stronger desired revival of emperor's power

Lastly, so long Japan because of her peculiar religious beliefs born of *Shintoism* abhorred contact with foreigners from whom the Japanese kept themselves at a safe distance. Now taking advantage of the internal feuds, foreigners began to cast covetous looks on Japan with an eye to create spheres of influence in this forbidden land. In 1854, for the first time in her history that Japan was forced to contract a treaty with the USA. The treaty gave the USA a number of diplomatic and consular rights in Japan. Quickly following the USA other western countries like England, Germany and France established trade centres in Japan and forced her to establish diplomatic relations with them. This impact of Western civilization and culture produced such a far-reaching effect on the Japanese ways of life that the country in the course of the next twentyfive years was transformed into a highly westernised country ready to imitate anything calculated to promote their national interests. The Japanese people, in spite of their inherent narrow outlook, are good mimics



and once they made up their minds to enrich their country with the help of Western knowledge, they set about the task with uncommon zeal and unique perseverance

The period from 1868 to 1888 may be characterised as a period of preparation for modernising the country. In 1868, the sixteen-year old Emperor Mutsuhito was restored to his power after the abdication of the Keiki Shogun and this restoration marked the beginning of enlightened rule in Japan. In the same year the emperor issued to his people the *Imperial Oath* which is regarded by many as the Magna Carta of Japan. According to this Oath, the Emperor promised that (1) Representative Bodies will be created and public opinion will play an important role in deciding all Government measures, (2) All people irrespective of rank and status will have a share in the affairs of the state, (3) All people will get opportunity to fulfil their legitimate claims, (4) old customs and usages detrimental to national progress will be abolished, (5) Knowledge and Wisdom calculated to promote national interest shall be imported from all parts of the world. The government was wise because it was not in an unholy haste in fulfilling the oath rather twenty years were consumed in making the people familiar with the new ideas and institutions.

The system of education was thoroughly overhauled on Western lines and a system of recruitment to public services by competitive examination was introduced. Many Japanese boys were sent to England, Germany and the USA to receive Western education so that the new generation of trained minds might be profitably utilised for the economic and cultural regeneration of the country. Railways, Posts and Telegraph systems were remodelled and industries were revitalised to such an extent that in foreign trade, Japan was considered as a rival to other leading nations in this respect. The army and the navy also received their due share of attention and in course of a few years Japan became a military power to reckon with.

The task of modernising the administrative system of the country was assigned by the Emperor to a committee headed by Prince Ito. Prince Ito along with a number of his colleagues

gues visited England, France, Germany and a few other countries. Prince Ito studied the working of the governmental system of these countries and saw their actual working. The German system of government, especially the Prussian model with a strong monarchy and the French system of administrative law impressed him more than any other European system of Government. On his return in 1889, Prince Ito submitted his draft constitution on the basis of his wide and varied experience in Europe and on February 11 of the same year, it became the national constitution of Japan on receiving Imperial assent. The first election to the Japanese legislature (Diet) took place in July, 1890 and with it Japan became fully modernised.

### Characteristics of the Japanese Constitution of 1889.

1. **Brevity.**—The constitution which was drawn up in 1889 by Prince Ito was a very brief document consisting of 7 chapters and 76 articles in all. The reason for this abnormal brevity of the constitution is to be found in the fact that the makers of the constitution laid down only the super-structure of the government leaving the details to be filled in by legislative enactments of the Diet. Important constitutional matters such as, succession to the Throne, organisation of the Upper House, election, etc. were left to be determined by the Diet. The first chapter of the Ito Constitution deals exclusively with the powers and position of the Emperor, the second with citizen's rights and duties while the remaining five chapters deal successively with the Imperial Diet, Ministry and Privy Council, Judiciary, Finance and other miscellaneous matters.

2. **Written Constitution.**—Though written, the constitution differs fundamentally from the written constitutions of other countries. Quite unlike many other written constitutions the Ito Constitution is an incomplete document leaving many things to be completed by formal legislation. Secondly, it is a constitution drawn up not by a representative assembly but by a small group of men authorised by the Emperor. Thirdly, though written, the constitution, like many other constitutions, developed through usages, customs and Imperial decrees. The influence of extra-constitutional institutions like the

Genro, the Zaibatsu, etc., are also discernible on the old Constitution of Japan.

3 **Rigid Constitution**—The Constitution of 1889 may be said to be extremely rigid. In spite of its rigidity, the U.S.A. Constitution may be amended formally and quite a good number of amendments have been effected through the cumbrous and complicated procedure. But the old constitution of Japan is more rigid in the sense that only the Emperor could propose amendments which required ratification by  $\frac{2}{3}$  majority of the Diet. As no proposal for amendment was ever made by the Emperor since the time of the framing of the Constitution, no amendment of the Constitution was effected through procedure prescribed by the Constitution. But this does not mean that the Constitution remained unchanged throughout the period from 1889 to 1945. As has been already pointed out, the Constitution underwent important modifications through informal methods.

#### 4 **Absolute Monarchy**

The Ito constitution inaugurated a system of government in Japan with an Emperor at the head in whom were concentrated all powers of the state—executive, legislative and judicial. This was done partly in accordance with the prevailing position of the Emperor in the governmental system and partly in accordance with the German model of monarchy by which Prince Ito had been profoundly influenced. According to the constitution, the Japanese Emperor was the source of all state powers but actually these powers were exercised by the Emperor's ministers or sometimes by the members of the Supreme War Council. Then the Japanese Constitution like the British Constitution may be said to be *unequal* in the sense that as in Great Britain, so in Japan, there was a divergence between the actual terms of the constitution and the actual practices. But suffice it to say here that the position of the Japanese Emperor during the pre-war (second) period was not reduced to one of virtual impotence like that of the British King. The Emperor of Japan if he wished, could have prevailed upon the ministry to accept his advice.

5 **Extremely Unitary**—The Constitution set up an extremely unitary form of government making no provision

for decentralisation or devolution of powers. The constitution made no reference to the institutions of local government all of which were administered by Imperial decrees. Neither was there any separation of powers between the legislature, executive and the judiciary. The central government with the Emperor at the head was all in all.

## 6 Parliamentary form of Government in appearance.

The framers of the constitution were considerably influenced by the British model of parliamentary government and hence they preferred the parliamentary form of government for their country. Accordingly a ministry responsible for their policy and action was set up in 1890. But the most remarkable thing about the ministry was that although the constitution described it as a responsible body, it nowhere mentioned to whom the ministry was responsible. In one of his public utterances, Prince Ito stated that the ministry was directly responsible to the Emperor and indirectly to the people. It is in this way that the principle of ministerial responsibility as it obtains in other parliamentary governments was very cleverly avoided or evaded. The result of this deliberate omission was that although Japanese ministries had often to face a hostile and implacable lower house, they were not required by law to resign. If they at all resigned, they resigned out of a sense of frustration due to the persistent and protracted opposition of the lower house. Sometimes the ministry, instead of resigning would dissolve the legislature and order a fresh election. In short, it was not legally obligatory on the part of the Japanese ministry to resign when it was defeated in the legislature. This shows that the Japanese constitution was influenced more by the Prussian than by the British model.

## 7 Constitution with a Bill of Rights.

The incorporation of a Bill of Rights in the constitution proves how rapidly Japan was democratising her political institutions by shaking off her mediaeval feudal system. The constitution enumerates the following rights of the citizens

1. Liberty of abode, 2. freedom from arbitrary arrest,
3. secrecy of correspondence, 4. right to own property, 5. free-

dom of thought, speech and expression, 6. right to hold public meetings and to form associations, 7. right to redress of grievances, 8. right to appointment to public offices

The above list of rights contained in the second chapter of the constitution proves the sincerity of efforts made by Japan to make a compromise between her own mediæval system of monarchical absolutism and modern constitutionalism.

## The Executive

### The Emperor.

According to the constitution of 1889, the Emperor was the head of the state and as such occupied a pre-eminent position in the constitutional system of the country. He was regarded as the 'Father of the Nation' and source of all state powers. His authority was as inviolable as his personality was sacred.

### Powers and Position of the Emperor.

The constitution declared him head of the state and endowed him with numerous powers—legislative, executive and judicial. He could summon, prorogue and dissolve the Diet. He could issue Imperial ordinances during the recess of the legislature. The Emperor exercised the legislative powers with the advice and consent of the Diet. He gave sanction to laws and ordered them to be promulgated.

He could appoint the members of the Imperial Cabinet and Privy Council, he could determine the organisation of the various departments of administration. As the Supreme Commander of the Army, Navy and Air forces, he could declare war, make peace and conclude treaties with foreign states. He was the sole authority to confer titles of honour upon persons. He could exercise the prerogative of mercy by granting pardon, amnesty, etc.

If divergence between theory and practice make it difficult to understand the position of the British King such divergence as presented by the Japanese Emperor is all the more difficult to understand. The powers enumerated above were exercised, not by the Emperor directly, but only in his name and the Emperor had actually little to do either in the formulation

of state policy or in conducting public affairs of the state. The constitution of 1889 provided that all Imperial acts were required to be countersigned by a minister, and ministers were required to "give their advice to the Emperor and be responsible for it." But as has been pointed out before, the constitution was deliberately silent as to whom the ministers were responsible to. The result of this ambiguity was that responsibility of the ministers, if it meant anything at all, was extended more to the direction of the Emperor than to that of the popular branch of the legislature. In such a predicament, the Emperor could have no personal responsibility for actions performed by the ministers. A question may be asked at this stage that if the Emperor would have refused to be guided by the advice of his ministers, would the minister have gone against the will of the Emperor? The answer is that the ministers in such a case could not have gone against the will of the Emperor in view of the influence of the Emperor on national life. It is difficult to ascertain at this stage to what extent Emperor Hirohito could be held responsible for the decision of his ministry to attack Manchuria and Pearl Harbour but the fact remains that he did not refuse to act as advised by his ministers. From the above discussion, it appears that the Emperor's position was not exactly like that of the British King. He could influence the decision of his ministers by rousing public opinion by virtue of his unique personality which was "sacred and inviolable."

### Ministry (Cabinet)

As has been pointed out earlier, it took twenty years for making preparations for modernising the country on Western lines. Accordingly, a ministry was formed in 1885, four years before the actual working of the Ito Constitution which simply accorded recognition to the old existing ministry. One curious fact in this connection is that the constitution said nothing about the Cabinet. The ministry used to be composed of a number of members varying between 12 and 15. The ministers were not required to be members of the legislature. Each of the ministers was in charge of a department such as interior, foreign affairs, finance and with a Prime Minister at their head. The ministry as a whole used to function like that in

Great Britain or France and apparently it seemed that the Japanese system of government had been modelled on the British parliamentary system. True it is that there was a ministry in Japan but no ministerial responsibility in the English sense. The constitution laid down that all acts of the Emperor were to be countersigned by a minister and ministers were required to 'give their advice to the Emperor and be responsible for it'. But the constitution did not say to whom the ministers would be responsible. In the absence of a definite and clear-cut constitutional provision on this point, ministerial responsibility in Japan leaned more in the direction of the Emperor than in that of the lower house of the Diet. The Japanese ministry had on rare occasions to vacate its office on being outvoted in the legislature, for, legally they were not required to resign on an adverse vote of censure of the popular branch of the Diet. If it had to resign, it resigned not on the ground of a vote of censure as such by the Diet but on the ground of the intolerable situation created by the persistence with which the Diet used to thwart the programme of the ministry. Many a ministry in Japan retired under this sort of pressure while many others managed to survive by dissolving the Diet and ordering fresh elections. This ministerial tangle in Japan was due to the omission which the framers of the constitution intentionally made out of their inordinate preference for the Prussian Constitution which also left ministerial responsibility vague and ambiguous.

### **The Privy Council.**

A Privy Council was created to advise the Emperor just one year before the new constitution came into operation. The Privy Council was the highest body of advisers of the Emperor consisting of 26 members of whom 12 were appointed from among Cabinet members by virtue of their office. Other members of the Council were appointed from among men who had distinguished themselves as educationists, diplomats, judges and generals. All councillors including the President and Vice-President of the Council were appointed by the Emperor as life-members with the advice of the Prime Minister.

The main function of the Privy Council was to advise the king in certain specific matters. It could advise the Emperor

only on being called upon by the Emperor to do so but its advice was not binding upon him. The advisory functions of the Privy Council were generally confined to the following matters

1. Specific matters relating to the Imperial Household
2. Drafts and doubtful points concerning articles of the constitution and laws and ordinances supplementing the constitution, e.g., law of election to the Diet, law of finance, etc
3. Matters relating to Imperial ordinances
4. International treaties and contracts
5. Amendment of Imperial ordinances concerning the organisation and functions of the council

The Privy Council of Japan though an imitation of the British Privy Council differs in many respects from that of Britain. The Cabinet and the Privy Council in Japan were two distinct and independent institutions each having its own legal status. This council was also a much smaller body than the British Privy Council. The British Privy Council though shorn of all its powers today possesses one important power namely, to issue orders-in-council, but the Japanese Council had no such power. The Privy Council of Japan, composed as it was of militarists, imperialists and business magnets, became the rallying centre of aggressive conservatism which stood in the way of the formation of a truly democratic government in Japan.

## **The Legislature**

### **The Imperial Diet**

The legislature of Japan following legislatures of democratically-governed countries consists of two Houses—the House of Peers and the House of Representatives

#### **House of Peers**

The House of Peers was the upper House consisting of 400 members drawn, as in Britain, from the following six groups (1) The male members of the Imperial Family who were majors, (2) Princes and marquesses above the age of 30, (3) Counts, Viscounts and barons elected by their respective



groups for a term of seven years, (4) Imperial nominees from the following three classes, viz, (a) Eminent scholars, (b) Representatives of the highest tax payers, (c) Representatives of the Imperial Academy

The composition of the upper House proved that it was an aristocratic body wholly contradictory to the policy enunciated by the Government in the charter oath of 1868.

### **House of Representatives**

The House of Representatives with a total numerical strength of 450 constituted the lower House of the Japanese Diet. The Representatives were elected for a term of four years but the House could be dissolved earlier by the Emperor. The House elected its own Speaker and Deputy Speaker.

Franchise was limited only to the male persons of 25 years and the right to vote largely depended upon payment of taxes. The new Franchise Act of 1925 liberalised the qualification for voting and practically a system of universal adult franchise was introduced though the right to vote was denied to women.

### **Powers and Functions of the Diet**

The main function of the Diet was, according to the old constitution, to give advice and consent to the emperor. Proposals for law-making could be made in either House of the Diet but a bill in order to be valid required the concurrence of both the Houses. But non-official bills could be passed only with the consent of the ministry. The Diet had no power to amend the constitution as the sole power to propose amendment was vested in the Emperor.

The Diet possessed limited powers over financial legislation. The estimates of the annual revenue and expenditure were placed before the Diet and these, to be valid, required the approval of the Diet. Besides this, the House of Representatives possessed a special power to the effect that any 30 Representatives in a body could propose new expenditure on any matter. In spite of this special power, the Diet however could neither increase nor decrease the amount of expenditure fixed in the budget on any subject. Expenditures relating to the enforcement of Imperial decrees or terms

of treaties, expenditures relating to the administration of Civil Service, Defence expenditures, expenditures relating to payment of interest on national debt and such other items fell in the above category over which the Diet had little control. The fact that the Diet was a subordinate law-making body was amply proved by the constitutional provision that even without its approval, the executive could spend money on the basis of the budget of the last preceding year.

True it is that the Japanese Diet bore some resemblance to the legislatures of Great Britain and the U.S.A., so far as its composition and organisation were concerned, but in point of legislative powers, it was far weaker than the other two. The true test of the power of a legislature may be ascertained with reference to its competence to make laws, to control finance and to control the executive. Judged from these points of view, the Japanese Diet did not come up to the ideal of what a popular legislative chamber should be. The Diet's power to make laws was indirectly curtailed by making its sessions too short to enable it to go into the details of legislation. It was given time enough to give its consent but little time to initiate and criticise. It could not propose amendment of the constitution. It had almost no power over financial legislation inasmuch as the executive could spend money on the basis of the previous year's budget without authorisation of the Diet. Lastly, as the ministry could not be removed by its vote of censure, it had practically no control over the policy and programme of the government excepting harrying the ministry by interpretations.

### **The Judiciary**

As has already been pointed out, the framers of the Constitution of 1889 preferred the French system of administrative law to the British Rule of Law. Hence in Japan, there were two sets of laws and two sets of courts—ordinary law and ordinary courts for private citizens and administrative law and administrative courts for public officials for offences committed in their official capacity.

There were four different categories of courts in Japan, viz., one Supreme Court, 7 Appeal Courts, 51 District Courts

and 281 Local Courts. Judges were recruited after a rigid test of their fitness by a system of competitive examination. All judges were appointed by the Emperor and used to hold office up to the age of 63 but only in the case of the President of the judges of the Supreme Court the age limit was fixed at 65. The Supreme Court of Japan, like the Supreme Court of the U.S.A., had no power of judicial review over acts passed by the Diet. Criminal cases were tried with the help of a Jury consisting of ten male jurors of the age of 30. Judges once appointed could not be removed except by impeachment. Besides ordinary and administrative courts, there were military courts as well.

### Local Government

As in her legal and judicial system, so in the administration of local government, Japan preferred the French system to either the British or the German system. As a result, the administrative system was highly centralised.

For convenience of administration, the whole country was divided into 46 districts (Prefectures) with a Prefect at the head who was appointed by the ministry of the Interior. Each prefecture had an elective council but the Prefect as an agent of the central government was the chief executive head who was responsible only to the ministry of the Interior. His main function was to maintain law and order, to look after education, health, agriculture and industry within his jurisdiction and if necessary, he had to administer the law of conscription.

The Districts or the Prefectures were mapped off into a number of cities, towns and villages. The administration of cities was entrusted to an elected Mayor and an elected city council.

Towns and villages had almost the same pattern of administration each with an elected executive and an elected council. Following the Swiss system of direct democracy, the smaller villages were administered by the village councils consisting of all the voters of the locality under the control of the Prefect.

## Extra-constitutional Organisations

### 1. The Genro

The Genro or the Council of Elder Statesmen was one of the most important extra-legal institutions which used to exert a tremendous influence upon the Japanese government in the conduct of public affairs as also in the making of high policy. It was customary with the Japanese Emperor to turn to outstanding figures of the nation seeking their advice whenever important steps were to be taken. In the appointment of a new Prime Minister, in declaring a war or in making treaties, the emperor used to seek the advice of this small group of men of proved wisdom and loyalty. But it must be remembered that there was nothing official about this arrangement but the whole thing rested on usage. The practice of consulting the *Genro* in taking important steps regarding state actions considerably weakened the powers of the ministry and the privy council which were reduced to a subordinate position.

### 2. The Supreme War Council

Military administration of Japan was thoroughly reorganised and brought on a line with her civil administration. A powerful army and a navy were built and universal military service was introduced. As in other countries, there were defence ministries in Japan too but the peculiarity about the Japanese defence ministries were that unlike other countries, the Japanese defence ministries were headed not by civilians but invariably by top-ranking military and naval men. In course of time, the whole military administration of the country passed in to the hands of a powerful extra-constitutional body in the form of a Supreme War Council consisting mainly of military and naval men of the highest rank. In the beginning, military matters were decided by these military masters in consultation with the civil authority but gradually the Supreme War Council began to assert its independence and decisions were often taken without any reference to the will of the civil authority and sometimes without consultation with that authority. The government—both civil and military, was headed by the Emperor and the militarists argued that consultation with the Emperor who was

the head of both civil and military administration made consultation with the Civil authority superfluous. Taking advantage of the flaw of the constitution, the Supreme War Council simply ignored the Civil authority. Thus during the period intervening the two World Wars, a civil-military dualism became a prominent feature of the administrative system in Japan resulting in unfortunate rivalry between the two wings of the government. The invasion of Manchuria in 1941-42 and the unprovoked attack on Pearl Harbour in 1942 resulting in defeats, humiliation and loss of national freedom were the consequences of the over-growth of this extra-constitutional body.

### **The Zaibatsu (Big Business)**

During the period of her rapid industrialisation in the latter half of the nineteenth century, the government of Japan adopted a policy of encouraging the absorption of smaller industries and business concerns by bigger ones resulting in the emergence of a number of gigantic trusts or corporations controlled by a number of wealthy families in Japan. These trusts were called *Zaibatsu* or money cliques which controlled a substantial part of the nation's business. The characteristic of these giant trusts was that they combined under a single family management all forms of business, running factories, railways, steamships, bank, dockyards, mines, forests, fisheries and various other businesses. Of these, the Mitsui family alone controlled nearly 150 different businesses. Next in importance were the Mitsubishi, the Sumitomo and the Yasuda families which also were large concerns. These wealthy families were invariably connected by matrimonial relations with Privy Councillors and members of the House of Peers. Not only this, they were big tax-payers and were always ready to invest large sums of money in government undertakings. They were also strong supporters of the militarist policy of expansion of Japan abroad. This military-cum-Zaibatsu clique may be held partly responsible for the aggressive nationalism of Japan during the second quarter of this century.

In England, in the USA and in India, the influence of business magnates and industrial leaders are discernible in

the formulation of internal as well as foreign policies of the governments but in Japan, the influence of the *Zaibatsu* surpassed all limits and the military-cum-money cliques often thwarted the more liberal policy of the Civil authority.

#### **Fourth Period—Japan after the Second World War— Post-War Japan**

Japan was badly beaten in the Second World War and forced to make an unconditional surrender to the Allied Powers on September 2, 1945. As a result of this defeat Japan was deprived of her vast empire and the mainland of Japan came under the military occupation of the USA, the principal partner of the Allied Powers. Douglas MacArthur the Supreme Commander for the Allied Powers in the Far East, was appointed Military Governor of Japan. The Supreme Commander had before him two tasks as laid down in the directives issued by higher authorities. Firstly, Japan was to be so subdued that in future she might not be a menace to the peace and security of the USA or any other country, and secondly, the future government of Japan should be so conceived as to ensure due respect for the rights of other nations as well as the high ideals enumerated in the charter of Human Rights of the United Nations. As the first step towards the implementation of this policy, Japan was not only deprived of her vast empire but her territories were confined only to the four main islands of Honsu, Kiusu, Hokkaido and Sikoku. Her military, naval and air forces were completely disbanded and the right to form them in future was denied. She was completely disarmed. Her political organisations were suppressed and other extra-constitutional agencies exterminated. As regards the formation of a new government in Japan, it was decided that a democratic form of government based on the consent of the people would be formed and so long as the objectives of the Allied Powers, especially of the USA, were not fulfilled, Japan would continue to remain under the occupation of the USA.

Thus the tragedy of the defeat of Japan in the Second World War was that she not only lost her empire but also her freedom.

## U.S.A. sponsored Japanese Constitution

The defeat of Japan, did not, however throw the machinery of the government out of its gear rather it remained almost in tact and continued to function according to the directives of the supreme commander of the Allied Forces. The Emperor, the Cabinet and the Diet—all were there and the USA military authority was in a specially advantageous position in the matter of enforcing its decisions through these regular organs of the Japanese government.

After much deliberation and investigation, a constitution helpful to the realisation of the objectives of the Allied Powers in ruling Japan was drafted in Washington by a body of American constitutional experts. This draft constitution was circulated by the then *Shidehara ministry* on March 6, 1946. Simultaneously with the publication of the draft constitution General MacArthur also issued a strongly worded statement in support of the American-sponsored constitution for Japan. The Japanese people took it as an accomplished fact. Approved by the Cabinet, the constitution was placed before the Diet which, after making minor changes in its wording adopted it by a majority and on November 3, 1946, it was promulgated by the Emperor in a special Imperial rescript. The new constitution came into force from May 3, 1947.

### The Preamble to the New Constitution

The distinguishing feature of the new constitution of Japan is that a Preamble setting forth the ideals and objectives of the government has been appended to the constitution. In the old constitution, there was absolutely no reference to the sovereignty of the people but the new constitution unequivocally declares that sovereign power resides with the people and this power is exercised for the benefit of the people by their representatives elected in the national Diet. The constitution further asserts that the Japanese people desire perpetual peace and want to live on friendly terms on the basis of the principle of co-existence with all other nations by banishing tyranny, oppression, slavery and intolerance towards other nations for all time from the earth. The preamble ends with a solemn vow taken by the Japanese people to

accomplish these high ideals and purposes with all their resources

("We, the Japanese people, acting through our elected representatives in the National Diet, determine that we shall secure for ourselves and our posterity the fruits of peaceful co-operation with all nations and the blessings of liberty throughout this land, and resolved that never again shall we be visited with the horrors of war through the action of the government, do proclaim that sovereign power resides with the people and do firmly establish the constitution. Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people")

### **Rights and Duties of Japanese citizens in the New Constitution**

Another prominent feature of the New Constitution is that a conspicuously full and specific Bill of Rights has been inserted in the third chapter of the constitution. In sharp contrast to the brief and in many ways qualified Bill of Rights of the old constitution, the Bill of Rights inserted in the New Constitution is more elaborate and more firmly guaranteed. Of course, a little probe into the rights laid down in the constitution proves their essentially American origin. The following rights—civil, political, economic and social have found place in the sanctuary of the New Constitution

#### **1. Civil Rights**

(a) All of the people shall be respected as individuals. Their right to life, liberty and pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

(b) All of the people are equal under the law and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status or family origin.

(c) Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.



(d) Freedom of religion is guaranteed to all. No religious organisation shall receive any privileges from the state nor exercise any political authority.

(e) Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

(f) All people shall have the right to receive an equal education corresponding to their ability, as provided by law.

(g) The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause.

(h) No person shall be apprehended except upon warrant issued by a competent judicial officer and shall not be detained without being at once informed of the charges against him or without the immediate privilege of counsel.

## **2. Political Rights**

(a) All adult people irrespective of sex shall have the right to elect public officials.

(b) The people shall have the right to choose their public officials and to dismiss them.

## **3. Economic Rights**

(a) All people shall have the right to own or hold property and private property may be taken for public use upon just compensation therefor.

(b) All people shall have the right to work.

(c) The right of workers to organise and to bargain and act collectively is guaranteed.

## **4. Social Rights**

(a) No person shall be in bondage of any kind. Involuntary servitude, except as punishment for a crime, is prohibited.

(b) All people shall have the right to maintain the minimum standards of wholesome and cultured living.

## **5. Citizens' Duties in the New Constitution**

One of the novel features of the new constitution is that it has enjoined upon the people the duty of preserving and

protecting the above rights carefully and collectively. The directive to the people in this connection is that on no account shall the citizens allow these rights to be abused. The citizens shall always be responsible for utilizing them for their collective good. The duties are

(a) All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided by law. Such education will of course be free.

(b) All people shall have the obligation to work.

The new constitution of Japan in so far as the insertion of a few citizens' duties in the constitution is concerned bears a remote resemblance to the Soviet Constitution in which the duties have been of course more elaborately and more emphatically enumerated.

## THE EXECUTIVE

### The Emperor

Monarchy in Japan became the target of attack from almost all quarters during the period between the occupation of Japan by America and the promulgation of the new constitution. The general consensus of opinion in the allied camp as also the extreme section of the Japanese opinion demanded abolition of monarchy which was considered by them as the rallying centre of militarism and jingoism. There was, on the other hand, the more sober and far-sighted politicians who thought it wise to retain this time-honoured institution as a check upon reactionary forces. In the end, after careful consideration of the pros and cons of the effects of the abolition of monarchy, it was decided to retain monarchy in a form in which it was shorn not only of all its former powers and glories but literally reduced to the position of a 'magnificent cypher'.

### Position and Powers of the Emperor according to the New Constitution

One of the chief features of the new constitution is that a distinction has been made between the real executive and the nominal executive. The Emperor is the nominal executive and the cabinet is the real executive. The Emperor is the

constitutional head. He represents the nation and unites the people but he is not the head of the government. His position is derived from the will of the people with which resides sovereign power.

The Imperial Throne shall be inherited and succeeded in accordance with the Imperial House Law as laid by the Diet. The Emperor shall appoint the Prime Minister as designated by the Diet and in the same way, the Justices of the Supreme Court. The Emperor with the approval of the Cabinet, shall promulgate edicts and constitutional laws, orders, and treaties. He can summon or dissolve the lower house. He receives foreign ambassadors and can award titles of honour. With the advice and consent of the cabinet, he can exercise the prerogative of mercy.

According to the new constitution, therefore, the advice and approval of the Cabinet are necessary for all acts of the Emperor in matters of state and the cabinet will be responsible for those acts. So with regard to the present position of the Emperor, it will not be far from truth to say that he neither reigns nor governs.

### **The Cabinet**

The Constitution of 1889 provided for a cabinet but no cabinet system in the English sense. The new constitution however introduced a cabinet form of government on Western model. Under the old constitution, ministerial responsibility, the most vital part of the cabinet form of government, was left vague and ambiguous but the new constitution expressly declares that ministers are responsible to the Diet for their policy and action.

According to the new constitution the Cabinet is formed in the following manner. Firstly, the Diet by a resolution designates a Prime Minister who is formally appointed by the Emperor. Secondly, the Prime Minister appoints other ministers, a majority of whom must be taken from among the members of the Diet. Any dispute between the two Houses in designating the Prime Minister may be settled by a joint conference of both the Houses. In case of disagreement between the two Houses even after a joint conference, the

decision of the House of Representatives will prevail if the House of Councillors fail to designate the Prime Minister within ten days after the joint conference. The constitution forbids the appointment of military men to cabinet rank. All the ministers including the Premier must be civilians.

### **Prime Minister**

The Prime Minister not only appoints other Cabinet members, but also distributes portfolios among them, coordinates the work of different departments and exercises a general supervision and control over other departments of the government. The Prime Minister may also remove other ministers as he chooses. The Prime Minister as the representative of the cabinet introduces all bills in the Diet and makes statements on Home and Foreign affairs to the Diet. All laws or orders issued by the cabinet are signed by the minister concerned but every such law or order must be countersigned by the Prime Minister. He presides over Cabinet meetings.

### **Functions of the Cabinet**

According to the new Constitution, the Cabinet is the real executive and is charged with general administrative functions. Besides administrative functions, the cabinet performs the following functions as well.

The cabinet executes laws, conducts foreign affairs including treaty-making with the previous or subsequent approval of the Diet, administers the civil service, prepares the budget and presents it to the Diet. It also decides on amnesties and reprieves. Its ordinance-making power is now limited only to enforcing the provisions of the constitution or of laws passed by the Diet. The cabinet can convoke special sessions of the Diet by its own decision or at the request of one-fourth of the members of either House.

As has already been said, the Cabinet has been made responsible to the Diet and this responsibility is enforced through questions, criticisms and through vote of censure. The constitution makes the cabinet responsible to the Diet (both the Houses) but in practice responsibility is to the lower House which can upset a cabinet by a vote of no-

confidence. But the cabinet instead of resigning may decide upon a dissolution of the House within ten days and order a new election within ninety days. The ministers are collectively responsible to the Diet and resign in a body whenever they are defeated in the lower House.

## The Legislature

### The Diet—Organisation and Procedure

The new constitution provides for a bi-cameral legislature for Japan. The House of Councillors has taken the place of the old House of Peers and the lower House still continues as the House of Representatives.

#### House of Councillors

The House of Councillors is the upper House in Japan. It has been remodelled on the pattern of the American Senate superseding the old House of Peers consisting of hereditary and nominated members. The Councillors—250 in number—are elected for six years by direct vote of the people, with half of the councillors elected every three years.

The Councillors possess equal powers with the lower House in ordinary law-making but it is inferior to the lower House in respect to its power over finance and control over the ministry.

#### House of Representatives

The new constitution has not made any substantial change in the composition and organisation of the Lower House which has also retained its old name in tact. The representatives—466 in number, like the Councillors, are elected by direct vote of the people for four years unless earlier dissolved by the Cabinet. The House elects its own Speaker and Vice-Speaker. Number of members in each House is determined by law. The New Constitution has introduced universal suffrage, for both men and women, and forbids electoral discrimination in any form.

The Diet holds one session in a year and the duration of the session has now been extended from three months to five months and in special circumstances, it may be further

extended. The Cabinet can call a special session of the Diet on the requisition of  $1/4$  members of each House. Generally, their sessions are public but secret sessions may be held when demanded by the  $2/3$  or more members present.

The new Constitution provides for 21 standing committees in each House. Each member of each House must be a member of one of these committees but no member can participate in the functions of more than three committees at a time. Each of these committees is entrusted with a particular function. On top of all these committees, there is a Central Committee (with eight Councillors and ten Representatives) which act as an advisory and steering committee over all other committees.

### **Powers of the Diet.**

Under the New Constitution, the Diet is the "highest organ of the state power and sole law-making organ." The new constitution has raised the status of the Diet by removing all the restrictions imposed upon its power by the old constitution. Excepting the fact that laws enacted by it are subject to judicial review of the Supreme Court, the Diet may be said to be supreme in all other respects.

The Diet can make laws in all matters of national interest. Bills become acts on receiving the assent of both the Houses. In case of disagreement between the two, the House of Representatives may call a joint conference in which decisions are taken by a simple majority of both. A bill which has been passed by lower House but rejected by the upper one will become an act if the lower House passes it for the second time by a two-thirds majority of the members present and if the upper House fails to take a final decision within sixty days from the date when it receives the bill from the lower House.

Money bills originate in the lower House and then they are referred to the upper one. In case of disagreement between the two, a joint conference may be held. In case no agreed decision is arrived at even through joint conference and the House of Councillors fail to make a final decision within thirty days from the date of the receipt of the bill from the lower House, the decision of the lower House will be

regarded as the decision of the Diet. So in ordinary legislation, the upper House can hold up final action for a period of 60 days and in financial legislation for a period of 30 days only. All treaties made by the executive are subject to the approval of the Diet but here also treaties ratified by the House of Representatives may be held up by House of Councillors for a period of 30 days only after which it will be deemed to have been ratified by the Diet.

Finally, under the New Constitution, the cabinet is responsible to both the Houses of the Diet. Both Councillors and Representatives may ask questions to the ministers, and criticise their policy and action but the ministry can be upset only by a vote of no-confidence of the lower House. Therefore the ministry is really responsible to the lower House which can drive the ministry from office by a vote of censure. But the ministry can also unmake the lower House by dissolving it within 10 days from the date on which no-confidence motion has been passed. In all cases of dissolution of the lower House, the Cabinet must order a fresh election within 90 days after such dissolution. During this period, the upper House may be convoked by the Cabinet only in its special session and measures passed by the upper House within such periods are subject to the approval of the lower House within 10 days after being convoked.

### **Judicial Organisation**

The judicial system in Japan has undergone important modifications on the model of the USA system. Judicial independence from executive interference has been secured and all sorts of extraordinary courts have been abolished. Judges, under the new constitution, are removable only by impeachment and their salaries cannot be reduced during the periods of their office.

#### **The Supreme Court.**

Closely following the provision of the USA constitution in regard to the judicial organisation, the new constitution of Japan lays down that "All judicial power is vested in a Supreme Court and such inferior courts as are established by law". The Supreme Court consists of one Chief Judge and a

number of other judges fixed by law. The chief judge is formally appointed by the Emperor after his designation by the Cabinet. Other judges are directly appointed by the Cabinet. Judges may be removed only by impeachment or in case of their being declared physically or mentally unfit. The constitution further provides that the appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of the House of Representatives following their appointment, and shall be reviewed again at the first general election of the House of Representatives after a lapse of ten years, and in the same manner thereafter. When the majority of votes in a general election favours the dismissal of a judge, he shall be dismissed. The judges shall be retired upon the attainment of the age fixed by law.

The Supreme Court is vested with the rule-making power under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of courts and the administration of judicial affairs. The Supreme Court may delegate the power of rule-making of inferior courts to such courts.

Another novel feature of the new judicial system is that the Supreme Court has been endowed with the power to determine the constitutionality of any law, order, regulation or official act but matters relating to judicial review shall be fixed by law.

The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All judges will hold office for a period of ten years with privilege of reappointment but they must retire upon attainment of the age fixed by law. Their salaries fixed by law shall not be decreased during their terms of office.

### **Local Government.**

The new constitution provides that organisation and operations of local public institutions shall be fixed by law in accordance with the principle of local autonomy. The chief executive officers of all local public bodies, the members of their assemblies, and other local officials shall be elected by direct popular vote. The Diet shall not, without the consent



of the majority of the voters of a local area, make any special law applicable only to that particular body

### **Amendment of the Constitution.**

The old constitution made the Emperor the sole authority to propose constitutional amendment. According to the new constitution sovereign power resides with the people who alone can amend the constitution. Proposals for constitutional amendment now involves practically three distinct processes (i) Proposal for amendment is to be made by the Diet and such a proposal when passed by two-thirds or more of all the members of each house (ii) is to be submitted to the people for ratification either at a special referendum or at such elections to be specified by the Diet. If passed by a majority of votes cast in such election or special referendum, (iii) the amendment is to be immediately promulgated by the Emperor in the name of the people as an integral part of the constitution. Thus popular sovereignty has been combined with the dignity of the Emperor in the matter of amendment of the Constitution.

### **Political Parties in Japan.**

Political parties in the true sense of the term were non-existent in Japan up to the middle of the nineteenth century. The two political parties which came into existence in the wake of the introduction of the constitution of 1889 and which exerted some influence on Japanese politics were the *Seiyukan party* and the *Minseito party*. Practically, there was little difference between the two parties. The former espoused the cause of the landlords while the latter was the supporter of the industrialists. Both of them drew their funds from the big businesses but none of them represented the masses. Of the two, the *Seiyukan party* was the more aggressive in its policy and programmes, always making common cause with the militarists for the expansion of Japan.

Party position in Japan took a different turn when in 1925, the manhood suffrage Act enfranchised nearly nine million agricultural and factory labourers. This led to the growth of a politically conscious proletariat class in Japan and a new party known as *Social Masses Party* came into

existence in order to safeguard the interest of the working classes. This party succeeded in securing as many as 37 seats in the Diet in the election of 1937. But for lack of funds and unity among party leaders, this party failed to make any impression upon the people.

During the war period, the military rulers of Japan disbanded all political parties. But after the conclusion of the war, numerous party groups were formed but none of them had any influence either on the electorate or on the government.

Of the present political parties of the Right, the *Liberal party* feebly clinging to the ideals of the old *Seiyukai party* and upholding the interests of the new landlords, is the largest party, which had won 240 seats in the Diet in 1952 election. Next to it was the *Democratic party* with a conservative bias and *Minseito* tradition. It had a total membership of 85 in the Diet in 1952.

Of the parties of the Left, the *Social Democratic Party* consisting mainly of peasants, labour and other working classes was the most important and promising party. In 1947 election, this party won 143 seats and in combination with other parties, it formed the first socialist-led ministry in Japan. But unfortunately the party was torn by internal quarrels and failed to work as a unit. In the next election of 1952, the party was split up into two groups—Right-wing Socialists and Left-wing Socialists. So the future possibility of the socialist party in Japan was hampered by sharp differences among its leaders resulting in the formation of several party groups, none of them strong enough to give expression of the labour point of view in Japanese politics.

The *Communist party* in Japan claims to have existed since 1925 though driven underground during the war. The position of this party was considerably weakened by internal disputes regarding communistic ideologies and tactics. In 1947 election, it secured 35 seats in the lower House but failed to secure any in 1952 election. All efforts to build up a united front with the Social Democratic party has failed so far and therefore the future of communism in Japan seems to be uncertain.

## Comparative Study of the Old and the New Constitutions of Japan.

The new Constitution of Japan has kept the institutions of the former government almost unimpaired. Although the institutions of Monarchy, the Cabinet and the Diet still exist, the new constitution differs fundamentally from the old in the following respects

Firstly, the old constitution was extremely brief leaving vital matters relating to the government to be determined by Imperial Decrees and legislative enactments. But the new constitution though not exhaustive is far more elaborate and explicit in matters relating to the organisation, functions and mutual relation of the different organs of the government.

Secondly, closely following the American model, the new constitution of Japan is prefaced by a preamble which proclaims the sovereignty of the people. Under the old constitution, the Emperor was made the repository of sovereign power, the new constitution asserts the priority and supremacy of the people. Besides, the new constitution of Japan declares that the Japanese people desire peace for all time and want to live on friendly terms with all peace-loving peoples of the world recognising the right of all peoples of the world to live in peace, free from fear and want. The recognition of the principle of peaceful co-existence with all other nations by banishing tyranny and slavery is a conspicuous feature of the new constitution not to be found in the old.

Thirdly, even a cursory glance at the list of the fundamental rights enumerated in both the constitutions will show that the fundamental rights in the new constitution are not only more explicit and elaborate but also have been made more effective. In contrast to the rights in the old constitution the new constitution has augmented the list of fundamental rights by the incorporation of a number of political and economic rights which are essential to the development of a man's personality. Another novel feature in this connection is that a number of duties of citizens has been added.

Fourthly the new constitution has created a secular state by giving the individual complete freedom of religion and belief. *Shintoism* is no longer recognised as the state religion.

*Fifthly*, under the old constitution, the Emperor alone was vested with sovereign power, he being the source of all state powers. According to the new constitution, the Emperor is the symbol of the state, deriving his position from the people with whom resides sovereign power. Thus the new constitution has stripped the Emperor of all his former powers in such a way that in future the aggressive nationalism of Japan with the Emperor as the rallying centre may not threaten the peace of the world again

*Sixthly*,\*the old constitution favoured the growth of the Privy Council, the Genro and the Supreme War Council which became in course of time the hot-bed of extreme conservatism and militarism. The new constitution has liberalised the government by replacing the old institutions by a popular ministry responsible to the popularly elected legislature. Thus the new constitution has ushered into existence a really responsible government on western model

*Seventhly*, the new constitution has helped the march of democracy in Japan by substituting a popularly elected House of Councillors for the House of Peers consisting of hereditary and nominated members. The House of Representatives has also been made more representative, more powerful and almost free from the influence of the Emperor

*Eighthly*, under the old constitution, voting right, the foundation of modern democracy, was confined only to those who could pay taxes at a certain rate. The system though subsequently much liberalised did not however introduce universal adult franchise. But the greatest glory of the new constitution is that it has introduced universal franchise irrespective of sex or property qualification

*Ninethly*, the new constitution has thoroughly overhauled the old system of judicial administration. No other courts excepting the ordinary courts have been recognised by the constitution. The new constitution has also provided for a supreme court which is not only the highest court of justice in Japan but it has also been vested with the power of judicial review of legislative enactments or official acts. The tenure of office of the judges also depends on popular votes

*Tenthly*, the units of local governments were, under the old constitution, merely agents of the central governments, having no initiative of their own. Now, under the new constitution, the chief executive officers and assemblies of all categories of local entities are elected by the people and local areas are administered in accordance with the principle of local autonomy.

*Lastly*, the old constitution could be amended solely by the Emperor but the new constitution has conferred the final right in this matter upon the people.

The contrast between the old and the new constitution is so marked that the new seems to be far superior to the old. Judged from the standpoint of democratic ideal, the new constitution seems to be an improvement upon the old. But there is no known method by which the superiority or otherwise of a constitution may be accurately measured. The true test of the excellence of a constitution can be ascertained only with reference to the extent to which it can fulfil the needs of the people for whom it is intended. If the people are satisfied with the provisions of the Constitution and accept it with good grace, the Constitution may be said to be good. This is why British Constitution is good in Britain and American Constitution is good in America. But British Constitution, if adopted in America, may not prove to be good, similarly, American Constitution, if adopted in Britain, may not prove to be good. The same principle also applies to the American-sponsored Japanese Constitution. The old constitution of Japan was drawn up by the political leaders of Japan under the behest of their Emperor who was the head of the State. The Japanese people accepted the Constitution as their own and never had shown any dislike for it. But the new Constitution of Japan, though promulgated by a subservient Japanese government, was in reality the handi-work of American statesmen drafted in Washington. It was a constitution imposed by the victors upon the vanquished without their consent. Therefore it may be said without fear of contradiction that although the new constitution of Japan possesses a number of attractive features, it cannot be said to be a good constitution in accordance with the principle that "Good government is no substitute for self-government."

## SUMMARY

*Introduction*—Japan was comparatively unknown to the outside world even during the first half of the nineteenth century. But Japan came into limelight from the last quarter of the same century. She came to be recognised as a power to reckon with when in 1905, she defeated Russia. Japan came to be looked upon as the symbol of freedom for the whole of the Asiatic continent.

*Evolution of the Constitution*—The constitutional history of Japan may be divided into four well-marked periods. According to Japanese legends, the Empire was founded in 660 B.C. and since then the descendants of the founder—Emperor has been reigning. There was absolute monarchy during the first period when the Emperor was simply deified by the people as the Vicegerent of the Sun-Goddess.

The second period begins with the rise of the Shogans in 1192. From this time, the Shogans became the real rulers who with the help of their sub-vassals—the Daimio, the Samurai, etc., exercised control over the people. As a result, the whole country was parcelled off into a number of fiefs having no central authority to enforce unity and solidarity of the country.

The third period of Japanese political history begins with the termination of the Shogunate in 1868 when the Emperor was restored to his original power. From 1868 to 1889, Japan set herself to the task of reconstructing the country on western lines by giving up her old ways of life. She established contacts with many Western countries and enriched herself with Western knowledge and culture. With a view to remodelling her administrative system, Prince Ito was sent to Europe to study the constitutions of different western countries and Prince Ito, on the basis of his European experience, drafted a constitution for Japan mainly on German model and this was adopted by an Imperial decree in 1889.

*Characteristics of the Constitution*—The Constitution was very brief. It was written and rigid and the Emperor was the sole authority to amend it. The constitution inaugurated a system of absolute monarchy in Japan and introduced a highly centralised system of government which was apparently parliamentary in form. The Constitution contained a number of fundamental rights.

*The Executive—the Emperor*—All state powers were concentrated in the hands of the Emperor. He was the final authority to make laws, to make high appointments, to declare war and to make peace. He could exercise the prerogative of mercy. But all these powers were exercised on the advice of the ministry.

*Council of Ministers*—The ministers were appointed by the Emperor on the advice of the Gemo. The Prime Minister was the leader of the cabinet. The ministers were the chief advisers of the Emperor to whom they were responsible but they were not required to be members of the legislature to which they had no collective responsibility.

*Privy Council*—Besides the ministry, the Emperor had another advisory body to consult with, viz, the privy council which could advise the Emperor on specific matters only on being requested by him. The council consisting of eminent educationists, statesmen and militarymen of the highest rank was consultative in character, their advice not being binding upon the Emperor.

*Imperial Diet*—A House of Peers with 400 members and a House of Representatives with 450 members constituted the Imperial Diet whose main function was to give advice and consent to the Emperor. The assent of both the Houses was necessary for making laws but the law-making powers of the Diet were considerably curtailed by the special law-making power of the Emperor. The Diet possessed limited powers also in financial legislation. Diet's position was further weakened by its lack of power in driving a ministry out of office.

*Judiciary*—Judicial administration of Japan was remodelled on the French system of administrative law. The judicial organisation consisted of one Supreme Court, 7 courts of appeal, 51 district courts and 281 local courts. The Supreme court had no power of judicial review.

*Local Governments*—The system of government was extremely centralised, there being little scope for the development of local autonomy. The whole country was divided into 46 prefectures each with a Prefect who was appointed by the central government. The elected local councils had no powers. The districts were subdivided into cities, towns and villages.

*Fourth Period—Post-war Japan*—Japan was defeated in the Second World War by the Allied Powers and it came under the military occupation of the U S A. Japan was completely disarmed and deprived of her vast empire so that she might not be a menace to the peace of the world in future. A constitution framed by the U S A authorities for Japan was promulgated on May 3, 1960.

*Preamble to the New Constitution*—Closely following the U S A constitution, a preamble setting forth the ideals and objectives of the new constitution was prefixed to it. The constitution declares that sovereign power resides with the people and are exercised by the representatives of the people. The

preservation of peace by banishing war and slavery is the ideal for which the new government shall strive for

*Rights and duties of citizens*—The new constitution has conferred upon the citizens a number of rights—civil, political and economic and has made them more effective. A few duties have also been enjoined upon the citizens

*The Executive—The Emperor*—A very powerful opinion favouring the abolition of monarchy was formed both in the U S A and in Japan after the conclusion of the war. But though monarchy survived it was shorn of its former powers and glories. Monarchy was retained as the symbol of the state and the unity of the people. The emperor is to perform all his functions with the advice and consent of the Cabinet

*The Cabinet*—The executive power of the state is vested in a cabinet headed by a Prime Minister, all of whom must be civilians but need not be members of the Diet. The premier is designated by the Diet but formally appointed by the Emperor. Other ministers are appointed by the Premier. The ministry can initiate bill, frame the budget, determine foreign policy and conclude treaties. The ministry is responsible to the Diet but removable by an adverse vote of the Lower House only

*The Legislature—The Diet*—The Diet is composed of a House of Councillors with 250 elected members for a term of six years and a House of Representatives with 466 members for a term of four years. Both the Houses are elected by the direct votes of the people on the basis of universal adult franchise. The Diet holds its session for five months once a year and special sessions may be convened, if necessary. Committees are formed in both the Houses

The Diet can make laws relating to all matters of national interest. Financial bills also require its approval. Of the two Houses, the House of Representatives is more powerful both in ordinary and financial legislation. The ministry is responsible to both the Houses but is removable only by the Lower House. Laws passed by it are subject to judicial review by the Supreme Court

*Judicial Organisation*—The judicial power of the state is vested in a Supreme Court and a number of other courts established by law. The Supreme Court consists of one Chief Judge and a number of other judges. The Chief Judge is designated by the Cabinet but formally appointed by the Emperor. Other judges are appointed by the Cabinet. All these appointments require ratification by popular referendum. The judges of the inferior Courts are appointed by the Cabinet from a panel of judges nominated by the Supreme Court



*Local Government* —The new constitution provides for the administration of all categories of local entities by the representatives elected by the local people.

*Political Parties* —There was no well-organised political party in Japan during the pre-war period. Although the *Seiyukai* and the *Minseito* parties were in existence, they had practically no hold upon the people.

Of the present Right-wing parties in Japan, mention may be made of the Liberal Party and the Democratic Party. Of the Left-wing parties, the Social Democratic Party is the more powerful. The Communist Party of Japan has been in existence since 1922 but it has no influence upon the masses.

*Amendment of the Constitution* —Proposals for constitutional amendment may be made only by the Diet. Amendments initiated by the Diet if passed by two-thirds or more of all the members of each House shall thereupon be submitted to the people for ratification. Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people as an integral part of the Constitution.

### *Comparative Study of the Old and the New Constitution*

1 The New Constitution is more elaborate and more explicit than the old one.

2 There was no preamble to the Old Constitution but the new is prefaced by a preamble which sets forth the ideals and purposes of the government.

3 The Fundamental Rights enumerated in the New Constitution are not only more elaborate and explicit but they have been made more effective. Special emphasis has been laid on a number of political and economic rights. Enumeration of citizens' duties form a novel feature of the new constitution.

4 The New Constitution, unlike the old, has established a Secular State. Full freedom of religion and conscience has been guaranteed by the New Constitution.

5 Under the old constitution, the Emperor was vested with sovereign power, the New Constitution has made the people sovereign by divesting the Emperor of his sovereign power, he being the symbol of the state and unity of the people.

6 The Privy Council, the Genro and such other centres of conservatism and militarism which flourished under the old constitution have been replaced by a really responsible ministry under the new constitution.

7 The old Diet constituted on the basis of a very limited franchise has been replaced by a Diet which is really representative in character and more powerful in its functions.

8 Formerly, the basis of franchise was tax-paying capacity but the new constitution has introduced universal adult franchise.

9 The judicial organisation and the system of local administration today have been remodelled more in keeping with democratic principles

10 The Emperor was the sole authority to initiate proposals for amendments of the old constitution but the new constitution vests this power with the people.

The New Constitution may appear to be superior to the old in many respects but the fact remains that the old constitution was framed by the leaders of Japan while the new one has been imposed upon the Vanquished by the Victors. Judged from this point of view, it may be said that the old was superior to the new in accordance with the principle that "Good government is no substitute for self-government".

### QUESTIONS

1 Compare and contrast the features of the New Constitution of Japan with those of the old.

2 The pre-war Japanese Emperor reigned as well as governed, the present Emperor neither reigns nor governs

*Critically examine the statement.*

3 Comment on the rights of the Japanese citizens as embodied in the New Constitution.

4 "A nation without national liberty can have no liberty—civil or political".

How far is this statement applicable to the Bill of Rights embodied in the New Constitution of Japan?

5 Discuss the constitution and functions of the present Japanese Diet and compare its position with that of the old

6 Discuss the composition and functions of the present Cabinet of Japan and discuss its relation to (a) the Emperor, and (b) the Diet

7 Describe the judicial system of Japan under the New Constitution and point out, in this connection, the important changes introduced by the New Constitution upon the old

8 Do you consider the New Constitution of Japan an improvement upon the old? If so, in what respects, if not, why not?

9 Discuss the extent to which the present constitution of Japan may be said to be a copy of the British and the U S A. Constitution

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